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09:24:55 2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
09:24:55
09:24:55 3 FOR THE COUNTY OF SAN DIEGO
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09:24:55)
09:24:55 6 Coordination Proceeding) JCCP No. 4042
09:24:55 Special Title (Rule 1550 (b)))
09:24:55 7) DEPOSITION OF
09:24:55 In re TOBACCO CASES II)
09:24:55 8) RICHARD CARCHMAN, PH.D.
09:24:55 This document relates to:)
09:24:55 9) VOLUME II
09:24:55 The People of the State of)
09:24:55 10 California, et al. v. Philip) PAGES 199 - 451
09:24:55 Morris, Incorporated, et al.,)
09:24:55 11 Los Angeles Superior Court)
09:24:55 Case No. BC 194217;)
09:24:55 12)
09:24:55 The People of the State of)
09:24:55 13 California, et al. v General)
09:24:55 Cigar Co., et al., San Francisco)
09:24:55 14 Superior Court Case No. 996780;)
09:24:55)
09:24:55 15 The People of the State of)
09:24:55 California, et al. v. Brown &)
09:24:55 16 Williamson, et al., San Francisco)
09:24:55 Superior Court Case No. 996781;)
09:24:55 17)
09:24:55 The People of the State of)
09:24:55 18 California, et al. v. Tobacco)
09:24:55 Exporters, et al., San Francisco)
09:24:55 19 Superior Court Case No. 301631)
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09:24:55 22 TAKEN ON: Friday, June 2, 2000
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09:24:55 23 TAKEN AT: 550 West C Street, Suite 1440
09:24:55 San Diego, California
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09:24:55 CSR No. 9733
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09:24:55 28 Vail, Christians & Associates (619)544-8344 199
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09:24:55		(Mr. Stone) 412
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Maintained by Mr. Stone

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VIDEOPHGRPER: Good morning. We are on the record. This is the videotaped deposition of Richard Carchman, Ph.D., Volume II. It's in re Tobacco Cases II, case JCCP 4042, being held at Vail, Christians and Associates, 550 West C Street, Suite 1440, in San Diego.

Today's date is Friday, June 2nd, 2000. The time is 9:26 a.m.

The certified shorthand reporter today is Maggie Smith with Vail, Christians.

And if counsel would again please state their appearances, the reporter will swear in the witness.

MR. STONE: Gregory Stone on behalf of Philip Morris, Incorporated.

MR. HOLTMANN: John Holtmann, Philip Morris.

MR. LENDRUM: Jeff Lendrum on behalf of Liggett Group.

MR. RICHARDSON: Tony Richardson on behalf of Brown and Williamson.

MR. MCGUIRE: Mickey McGuire, on behalf of plaintiffs.

RICHARD CARCHMAN, Ph.D.,
BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MR. MCGUIRE:

Vail, Christians & Associates (619)544-8344 203

Q Let me ask you a few direct questions before we go to some documents.

Is there a scientific controversy about ETS and its ability to cause lung cancer --

MR. STONE: Objection.

BY MR. MCGUIRE:

Q -- in nonsmokers?

MR. STONE: Objection; vague and ambiguous

09:27:23 9 with respect to the phrase "scientific controversy."
09:27:27 10 Vague and ambiguous with respect to the concept or term
09:27:31 11 "ability to cause." Improperly calls for opinion
09:27:37 12 testimony.

09:27:37 13 You can answer.

09:27:40 14 THE WITNESS: I wouldn't answer it with
09:27:41 15 regard to scientific controversy. I would answer it by
09:27:44 16 saying that there are scientists who have expressed
09:27:47 17 opinions that they are unsure as to whether the
09:27:51 18 epidemiological data would support a causal inference, for
09:27:57 19 example.

09:27:57 20 BY MR. McGUIRE:

09:27:57 21 Q Have -- has Philip Morris ever stated that
09:28:03 22 there is a scientific controversy about ETS and its
09:28:06 23 ability to cause lung cancer in nonsmokers?

09:28:10 24 MR. STONE: Objection; lacks foundation,
09:28:12 25 calls for speculation, vague and ambiguous with respect to
09:28:15 26 the concept of Philip Morris stating something.

09:28:18 27 You may answer.

09:28:19 28 THE WITNESS: I can't respond as to whether
09:28:22 1 Vail, Christians & Associates (619)544-8344 204
09:28:27 2 anybody in Philip Morris has ever said -- used that phrase
09:28:30 3 or not. All I can tell you is that within the group of
09:28:33 4 scientists that I have interacted with over the years at
09:28:39 5 Philip Morris, we don't discuss ETS and the alleged health
09:28:43 6 effects using -- generally using the word "controversy."
09:28:47 7 Somebody may have, but, generally, the discussion revolves
09:28:51 8 around the actual scientific facts, whether they're
09:28:53 9 consistent or not consistent.

09:28:53 10 BY MR. McGUIRE:

09:28:56 11 Q Have you ever stated that there is a
09:28:57 12 controversy?

09:28:58 13 A I may have.

09:29:01 14 Q Have you changed your mind?

09:29:02 15 MR. STONE: Objection; assumes facts not in
09:29:07 16 evidence, improper as to form, lacks foundation.

09:29:09 17 THE WITNESS: Within the context as I have
09:29:15 18 tried to answer your other question about controversy. If
09:29:18 19 by that you mean do I still believe there are people out
09:29:23 20 there that do not feel that based on the scientific
09:29:26 21 evidence, that one can draw a causal inference, I would
09:29:28 22 say yes and yes for myself as well.

09:29:28 23 BY MR. McGUIRE:

09:29:46 24 Q Have you ever stated under oath, appearing on
09:29:50 25 behalf of Philip Morris, that there is a controversy --
09:29:54 26 scientific controversy about ETS and its ability to cause
09:29:56 27 lung cancer in humans?

09:29:58 28 MR. STONE: Objection; improper as to form,
lacks foundation, calls for speculation, overbroad.

09:30:00 1 Vail, Christians & Associates (619)544-8344 205
09:30:02 2 You can answer to the best of your
09:30:02 3 recollection.

09:30:06 4 THE WITNESS: I thought I have answered it
09:30:09 5 when you asked me that question, I thought, just the same
09:30:13 6 question a moment ago. And I think my answer was I may
have.

09:30:14 7 BY MR. McGUIRE:

09:30:14 8 Q Is it true that not one American has
09:30:17 9 developed lung cancer as a result of being exposed to
09:30:20 10 environmental tobacco smoke?

09:30:23 11 MR. STONE: Objection; improperly calls for
09:30:25 12 opinion testimony, lacks foundation, assumes facts not in
09:30:29 13 evidence, calls for speculation.

09:30:32 14 You can answer as best you can.
09:30:34 15
09:30:37 16 THE WITNESS: I don't believe there is any
way to scientifically answer that question, for me.
09:30:41 17 BY MR. McGUIRE:
09:30:41 18 Q Has Philip Morris ever stated that?
09:30:45 19 MR. STONE: Same objections.
09:30:49 20 THE WITNESS: I have no idea within the
09:30:51 21 context of the word "ever" whether anybody at Philip
09:30:55 22 Morris has ever stated anything like that or anything that
09:30:58 23 could be construed like that. So I can't answer that
09:31:01 24 question.
09:31:01 25 BY MR. McGUIRE:
09:31:01 26 Q Does Philip Morris believe that smoking is
09:31:08 27 injurious to nonsmokers?
09:31:10 28 MR. STONE: I'm going to object on the
09:31:12 1 Vail, Christians & Associates (619)544-8344 206
09:31:14 2 grounds that the question is overbroad. It's improper as
09:31:19 3 to form, calls for speculation. It also assumes facts
09:31:24 4 that are inconsistent with legal reality; namely, that a
09:31:27 5 corporation can have a belief.
09:31:29 6 You can answer as best you can.
09:31:29 7 BY MR. McGUIRE:
09:31:31 8 Q Let me restate the question, asking you as
09:31:34 9 the person most knowledgeable from Philip Morris.
09:31:39 10 Is smoking injurious to nonsmokers?
09:31:41 11 MR. STONE: This was asked and answered in
09:31:43 12 yesterday's deposition on several occasions. The question
09:31:46 13 is harassing. If you have questions you want to put to
09:31:49 14 the witness that you haven't already put to him, let's
09:31:53 15 cover those. Let's not rehash grounds. If you're just
09:31:56 16 trying to delay this, that would certainly be an improper
09:31:57 17 use of the deposition.
09:32:00 18 You can answer this question again,
09:32:03 19 Dr. Carchman, but I will not let continued efforts to
repeat yesterday's questioning go on.
09:32:06 20 THE WITNESS: I thought I answered it. It
09:32:08 21 was one of the first questions that was asked of me by
09:32:10 22 Mr. McGuire.
09:32:12 23 BY MR. McGUIRE:
09:32:12 24 Q Maybe you're wrong.
09:32:16 25 So would you answer again, as your counsel
09:32:18 26 requested you to.
09:32:19 27 A I don't think I'm wrong. You asked me if I
09:32:22 28 felt there was any adverse health effects associated with
09:32:26 1 Vail, Christians & Associates (619)544-8344 207
09:32:30 2 ETS exposure, and I went through a list of, I think, two
09:32:36 3 or three things very early on. My recollection on that is
09:32:36 4 very clear.
09:32:41 5 Q And the question now is, is it injurious?
09:32:42 6 MR. STONE: Is that different than adverse
09:32:43 7 health effects?
09:32:44 8 MR. McGUIRE: It may be.
09:32:46 9 MR. STONE: Then you tell us how it's
09:32:46 10 different.
09:32:48 11 MR. McGUIRE: I'm not being deposed here.
09:32:49 12 You've told him to answer the question.
09:32:51 13 MR. STONE: I'm going to -- based on the
09:32:52 14 witness's clear recollection that it's asked and answered
09:32:56 15 and on your refusal to explain how the question is any
09:32:58 16 different from the preceding one, I'm not going to
09:33:00 17 instruct him to continue to answer questions that he
09:33:03 18 clearly perceives as being harassing.
MR. McGUIRE: Did you say you're not going to

09:33:04 19 instruct him, or you are going to instruct him not to
09:33:07 20 answer?

09:33:07 21 MR. STONE: I said I'm not going to instruct
09:33:09 22 him to continue to answer questions. He's told you he's
09:33:12 23 already answered the question.

09:33:13 24 BY MR. McGUIRE:

09:33:13 25 Q Answer the question, sir.

09:33:14 26 MR. STONE: He told you he already answered
09:33:16 27 it. Put your next question.

09:33:17 28 MR. McGUIRE: Are you instructing him not to
09:33:19 1 Vail, Christians & Associates (619)544-8344 208
09:33:20 2 answer?

09:33:20 3 MR. STONE: No. He answered it.

09:33:27 4 MR. McGUIRE: Okay. As far as I'm concerned,
09:33:29 5 we'll have to go see the judge.

09:33:29 6 MR. STONE: Fine.

09:33:34 7 MR. McGUIRE: So -- well, what I'll do is
09:33:36 8 I'll mark this question as well as some of the other ones
09:33:39 9 you instructed on yesterday, even though you claim not to
09:33:44 10 be instructing him, he apparently is not going to answer.
09:33:47 11 You continue to answer, you continue to obstruct the
09:33:52 12 proceedings, and that's not, as you know, appropriate or
09:33:53 13 proper.

09:33:53 14 BY MR. McGUIRE:

09:33:56 15 Q I'm going to ask you one more time, sir.

09:33:59 16 Is smoking injurious to the health of
09:33:59 17 nonsmokers?

09:34:02 18 MR. STONE: Dr. Carchman, you can explain to
09:34:06 19 Mr. McGuire again, if you like, that you answered that
09:34:08 20 question at length yesterday. You can answer the question
09:34:10 21 in any fashion you deem appropriate. The question is
09:34:12 22 asked and answered. It's also vague and ambiguous,
09:34:14 23 improperly calls for opinion testimony.

09:34:16 24 MR. MILES: Okay. I'll be joining in the
09:34:20 25 objection. I also think it's an incomplete hypothetical
09:34:23 26 and assumes facts.

09:34:26 27 THE WITNESS: I stand by my clear
09:34:30 28 recollection that that question was asked early on in the
09:34:34 1 deposition yesterday, and I provided a complete answer to
09:34:34 2 Vail, Christians & Associates (619)544-8344 209
09:34:34 3 it.

09:34:38 4 BY MR. McGUIRE:

09:34:42 5 Q I understand, sir. But unless a judge rules
09:34:47 6 that this is cumulative and somehow is going to delay the
09:34:48 7 proceedings, it's not unusual for a witness to be asked to
09:34:52 8 answer a question a second time.

09:34:55 9 So if you refuse to go further, tell me.
09:34:58 10 Otherwise, your counsel has made objection. I've phrased
09:35:00 11 the question. I'd appreciate a "yes" or a "no."

09:35:02 12 MR. STONE: Mr. McGuire, he's answered the
09:35:05 13 question as he deems appropriate. If you think his answer
09:35:07 14 is inadequate, you know the remedies available to you.

09:35:09 15 MR. McGUIRE: Yes. And I will follow those
09:35:11 16 remedies or proceed against them.

09:35:14 17 MR. STONE: Let's adjourn now and go do it.
09:35:16 18 Otherwise, you're waiving any claim that there's anything
09:35:20 19 improper if you don't take your steps now.

09:35:20 20 MR. McGUIRE: I'll see you in court on that
09:35:20 21 one.

09:35:24 22 BY MR. McGUIRE:

09:35:27 23 Q We accept an interest in public health as a
basic responsibility paramount to every other
consideration in our business.

09:35:27 24 Is that a goal that Philip Morris -- or a
09:35:37 25 mission statement that Philip Morris has adopted?
09:35:40 26 A You are reciting from a 1954 advertisement,
09:35:44 27 paper advertisement in which Philip Morris was a party to,
09:35:50 28 I believe, if you're referring to the Frank statement.
Vail, Christians & Associates (619)544-8344 210

09:35:53 1 Q Yes.
09:35:55 2 A That statement, as expressed in that
09:35:58 3 advertisement in 1954, which is, I think, one sentence
09:36:05 4 taken from a much larger -- much larger document, I think
09:36:12 5 was an expression at that time of those people who signed
09:36:14 6 it for the companies they represented.
09:36:17 7 Q Does it no longer represent the mission
09:36:22 8 statement of Philip Morris?
09:36:23 9 MR. STONE: Objection; vague and ambiguous
09:36:25 10 with respect to the phrase "mission statement." Lacks
09:36:27 11 foundation, beyond the scope in which this witness has
09:36:29 12 been designated to testify.
09:36:31 13 You can answer.
09:36:36 14 THE WITNESS: Oh. Thank you.
09:36:37 15 When you asked me yesterday about the mission
09:36:42 16 statement for Philip Morris, I indicated that there had
09:36:45 17 been several and a more recent one, but I could not recall
09:36:50 18 then, nor can I recall now what the specific mission --
09:36:55 19 mission statement currently is.
09:36:57 20 In toto, I have a recollection of some parts
09:37:06 21 of it, but not in -- not in toto.
09:37:12 22 BY MR. McGuIRE:
09:37:12 23 Q The question again is, is that statement no
09:37:27 24 longer representative of the mission statement of Philip
09:37:30 25 Morris?
09:37:31 26 MR. STONE: Objection; asked and answered,
09:37:34 27 outside the scope on which this witness has been
09:37:37 28 designated to testify, lacks foundation, vague and
Vail, Christians & Associates (619)544-8344 211
09:37:39 1 ambiguous and overbroad.
09:37:41 2 You can answer as best you can.
09:37:43 3 THE WITNESS: Again, since -- since I can't
09:37:45 4 remember, nor do I have in front of me the current mission
09:37:50 5 statement, I cannot answer your question either "yes" or
09:37:53 6 "no."
09:37:54 7 BY MR. McGuIRE:
09:37:54 8 Q Has Philip Morris ever acted contrary to the
09:37:59 9 1956 Frank statement?
09:38:01 10 MR. STONE: Objection; assumes facts not in
09:38:02 11 evidence, lacks foundation, calls for speculation,
09:38:06 12 overbroad, beyond this witness's area of personal
09:38:09 13 experience, outside the area in which this witness has
09:38:12 14 been designated to testify, improperly calls for opinion
09:38:16 15 testimony.
09:38:18 16 THE WITNESS: If you don't mind, Mr. McGuIRE,
09:38:21 17 could you repeat your question.
09:38:22 18 BY MR. McGuIRE:
09:38:22 19 Q Is that statement no longer representative of
09:38:31 20 the mission statement of Philip Morris? We went past
09:38:34 21 that. I asked has Philip Morris ever acted contrary to
09:38:38 22 the 1956 Frank statement?
09:38:40 23 MR. STONE: Same objections.
09:38:43 24 THE WITNESS: Just a minor correction. It's
09:38:45 25 the 1954 --
09:38:47 26 BY MR. McGuIRE:
09:38:47 27 Q Thank you.
09:38:48 28 A You're quite -- you're quite welcome.

09:38:54 1 And I don't know if looking at one sentence
09:38:56 2 from an entire statement I could reflect back and give you
09:39:01 3 a complete -- a complete answer. I've never thought about
09:39:07 4 it in that context. I've only thought about it within the
09:39:10 5 context of the entire -- of the entire document. And
09:39:14 6 there are things in that document that were true in 1954
09:39:17 7 that are no longer true today.

09:39:20 8 So to ask me about one sentence from an
09:39:26 9 entire document and to reflect on that with regard to the
09:39:30 10 company's behavior in the ensuing 46 years, I don't think
09:39:35 11 I can -- I could answer a question like that.

09:39:37 12 Q You don't think you can, or you can't?

09:39:43 13 A I can't.

09:39:43 14 Q Is it true that Philip Morris carries out ETS
09:39:48 15 research and reviews scientific literature in order to
09:39:50 16 keep the controversy alive?

09:39:52 17 MR. STONE: Objection; asked and answered
09:39:53 18 yesterday, vague and ambiguous, lacks foundation, calls
09:39:58 19 for speculation.

09:40:02 20 THE WITNESS: Over the time that I was
09:40:03 21 responsible for the company's efforts in ETS, that was
09:40:11 22 never part of our objectives or mission.

09:40:12 23 BY MR. McGUIRE:

09:40:12 24 Q Was it the -- was it part of your objectives
09:40:23 25 or mission at the time that you took over that
09:40:26 26 responsibility?

09:40:27 27 MR. STONE: Same objections.

09:40:29 28 THE WITNESS: No.

09:40:30 1 BY MR. McGUIRE:

09:40:30 2 Q Was it ever stated in any documents that you
09:40:32 3 reviewed at the time you took over that responsibility
09:40:35 4 that your mission would be to keep the controversy
09:40:38 5 regarding ETS alive?

09:40:39 6 MR. STONE: Same objections.

09:40:40 7 THE WITNESS: No.

09:40:41 8 BY MR. McGUIRE:

09:40:41 9 Q Does Philip Morris use a strategy to defend
09:40:50 10 itself on three major fronts, including litigation,
09:40:53 11 politics, and public opinion?

09:40:55 12 MR. STONE: Mr. McGuire, I don't think that's
09:40:56 13 anywhere within the scope of the topics on which you've
09:40:59 14 asked the witness to be designated to testify for Philip
09:41:02 15 Morris.

09:41:03 16 If you'd like to show me how you think it is,
09:41:05 17 I'll consider whether we can continue this line of
09:41:08 18 questioning.

09:41:08 19 MR. McGUIRE: Is he here to answer questions
09:41:10 20 about ETS and Philip Morris' position on ETS?

09:41:14 21 MR. STONE: He's here to answer questions
09:41:15 22 outlined, subject to our objections, in requests 1, 2, and
09:41:19 23 10 of your notice of deposition.

09:41:20 24 MR. McGUIRE: And he's not here to answer
09:41:23 25 questions subject to the renote; is that right?

09:41:28 26 MR. STONE: What's different between the
09:41:29 27 renote and the original notice?

09:41:31 28 MR. McGUIRE: It says we want to talk to the

09:41:32 1 Vail, Christians & Associates (619)544-8344 214
09:41:35 2 person who can answer questions regarding ETS, its
09:41:39 3 relationship to disease, and the basis of it.

09:41:42 4 MR. STONE: Which request is that in the
renote?

09:41:42 5 MR. MC GUIRE: 1.
09:41:43 6 MR. STONE: Do you mean the renote is
09:41:45 7 different than the original notice?
09:41:46 8 MR. MC GUIRE: Well, it's supplemental to it.
09:41:49 9 MR. STONE: Oh, you mean the supplemental?
09:41:51 10 MR. MC GUIRE: Yes. I'm sorry. Yes.
09:41:52 11 MR. STONE: Well, as I told you yesterday,
09:41:54 12 he'll answer questions on the supplemental, although the
09:41:58 13 request was untimely. He'll answer with request
09:42:02 14 No. 1. But what does this have to do with request No. 1
09:42:05 15 in the supplemental?
09:42:06 16 MR. MC GUIRE: I think it relates to it.
09:42:07 17 MR. STONE: Philip Morris' position on ETS
09:42:10 18 and its relationship to disease has something to do with a
09:42:13 19 question which was, if I can go back to it, does Philip
09:42:21 20 Morris use a strategy to defend itself on three major
09:42:24 21 fronts, including litigation, politics, and public
09:42:27 22 opinion?
09:42:27 23 MR. MC GUIRE: Yes.
09:42:27 24 MR. STONE: That has something to do with the
09:42:29 25 relationship between disease and ETS?
09:42:31 26 MR. MC GUIRE: Yes. And I'll add to it as
09:42:34 27 that relates to environmental tobacco smoke.
09:42:36 28 MR. STONE: As what relates to environmental
Vail, Christians & Associates (619)544-8344 215
09:42:39 1 tobacco smoke?
09:42:39 2 MR. MC GUIRE: My question.
09:42:40 3 MR. STONE: I don't understand the question.
09:42:41 4 Rephrase the question. Let's try to get to the heart of
09:42:44 5 this.
09:42:44 6 MR. MC GUIRE: Okay.
09:42:45 7 BY MR. MC GUIRE:
09:42:45 8 Q Does Philip Morris adopt a strategy -- or has
09:42:48 9 Philip Morris adopted a strategy currently that will
09:42:51 10 defend itself in ETS lawsuits by using litigation,
09:42:55 11 politics, and public opinion?
09:42:58 12 MR. STONE: Compound.
09:43:00 13 I'm going to instruct the witness not to
09:43:02 14 answer on that ground. You can frame a proper question.
09:43:06 15 BY MR. MC GUIRE:
09:43:06 16 Q Does Philip Morris -- has Philip Morris
09:43:10 17 adopted a strategy currently that it will defend itself in
09:43:13 18 ETS lawsuits by using litigation?
09:43:15 19 MR. STONE: Well, how do you defend a lawsuit
09:43:17 20 other than in litigation, Mr. McGuire? Does that make
09:43:20 21 sense to you? Does that question make sense? Do you
09:43:24 22 bring a case without litigation? Do you defend a case
09:43:27 23 without litigation? Where is the -- where is the common
09:43:30 24 sense for that question? And what does that have to do
09:43:35 25 with ETS and a relationship to disease?
09:43:36 26 MR. MC GUIRE: Are you instructing him not to
09:43:38 27 answer, or are you just making a speech here?
09:43:40 28 MR. STONE: At the moment, I think I'm making
Vail, Christians & Associates (619)544-8344 216
09:43:42 1 a speech. I'm asking you --
09:43:43 2 MR. MC GUIRE: Would you shut up, please.
09:43:45 3 You're being disruptive.
09:43:46 4 MR. STONE: I'm not being disruptive.
09:43:47 5 MR. MC GUIRE: Yes, you are.
09:43:48 6 MR. STONE: You show me how that relates to
09:43:49 7 one of your questions, one of your areas of inquiry.
09:43:52 8 MR. MC GUIRE: That's not my job.
09:43:54 9 MR. STONE: It is your job.

09:43:55 10 MR. MC GUIRE: No, it isn't.
09:43:56 11 Are you instructing him not to answer or
09:43:58 12 not?
09:43:58 13 MR. STONE: No.
09:43:59 14 MR. MC GUIRE: You're not instructing him.
09:44:00 15 BY MR. MC GUIRE:
09:44:00 16 Q Would you answer the question, please, sir,
09:44:02 17 if you have it in mind.
09:44:02 18 A Could you please play it back for me.
09:44:06 19 MR. MC GUIRE: Yes. Would you read it back.
09:44:08 20 (Record read.)
09:44:23 21 MR. STONE: Objection; nonsensical, vague and
09:44:28 22 ambiguous, lacks foundation, calls for legal opinion
09:44:32 23 outside this witness's area of experience.
09:44:34 24 You can answer as best you can.
09:44:37 25 THE WITNESS: I don't know.
09:44:37 26 BY MR. MC GUIRE:
09:44:37 27 Q The same question regarding politics.
09:44:40 28 MR. STONE: Same objections.
Vail, Christians & Associates (619)544-8344 217
09:44:42 1 THE WITNESS: Same answer. I don't know.
09:44:44 2 BY MR. MC GUIRE:
09:44:44 3 Q Same question regarding public opinion.
09:44:47 4 MR. STONE: Same objections.
09:44:49 5 THE WITNESS: Same answer. I don't know.
09:44:50 6 BY MR. MC GUIRE:
09:44:50 7 Q Has Philip Morris said that this strategy is
09:44:53 8 not one that we intend or hope will bring us victory, but
09:44:58 9 it's a holding strategy?
09:45:00 10 MR. STONE: What strategy?
09:45:01 11 BY MR. MC GUIRE:
09:45:01 12 Q Defending itself in litigation using politics
09:45:05 13 and public opinion.
09:45:05 14 MR. STONE: Objection.
09:45:06 15 We've dropped litigation?
09:45:07 16 MR. MC GUIRE: No. All three.
09:45:09 17 MR. STONE: Defending itself in litigation
09:45:11 18 using politics and public opinion?
09:45:13 19 MR. MC GUIRE: Defending itself by using
09:45:15 20 litigation, politics, and public opinion.
09:45:17 21 MR. STONE: Okay. Objection; compound, vague
09:45:19 22 and ambiguous, lacks foundation, calls for opinion
09:45:21 23 testimony in the area of legal judgments that are outside
09:45:26 24 this witness's experience, outside the area in which this
09:45:30 25 witness has been designated to testify.
09:45:31 26 To the extent you can answer the question, go
09:45:35 27 ahead.
09:45:35 28 THE WITNESS: I don't know.
Vail, Christians & Associates (619)544-8344 218
09:45:36 1 BY MR. MC GUIRE:
09:45:36 2 Q Have you ever been told by another employee
09:45:41 3 of Philip Morris, senior to you, that this is a holding
09:45:47 4 strategy consisting of creating doubt about the health
09:45:50 5 care -- about health -- excuse me -- creating doubt about
09:45:55 6 the health charge without actually denying it?
09:45:57 7 MR. STONE: Same objections.
09:46:00 8 THE WITNESS: If somebody used those words to
09:46:03 9 me, I don't remember it. I don't think so. But I don't
09:46:06 10 remember anybody saying that to me.
09:46:07 11 BY MR. MC GUIRE:
09:46:07 12 Q Was it part of the global strategy that you
09:46:11 13 were advised about in 1980 -- excuse me -- 1993?
09:46:16 14 MR. STONE: Objection; assumes facts not in

09:46:17 15 evidence, vague and ambiguous.
09:46:21 16 THE WITNESS: I was not advised about any
09:46:23 17 global strategy in 1993.
09:46:24 18 BY MR. McGUIRE:
09:46:24 19 Q Have you ever personally stated that it's
09:46:46 20 incorrect to express levels of ETS exposure in terms of
09:46:50 21 cigarette equivalents?
09:46:52 22 A Yes.
09:46:54 23 Q When did you do that?
09:46:56 24 A On several occasions.
09:46:59 25 Q Is that still your position?
09:47:02 26 A Placed within a proper context, that if
09:47:06 27 you're going to talk about cigarette equivalents, you have
09:47:09 28 to have a broader understanding as to what the denominator
Vail, Christians & Associates (619)544-8344 219
09:47:12 1 is; that is, whether it's a gas-phased component or
09:47:17 2 particulate -- particulate component and that the only
09:47:22 3 people that should be talking about that are people versed
09:47:24 4 in the science that understand what the limitations of
09:47:31 5 such a use of the term is.
09:47:33 6 So that's the context in which I have used
09:47:35 7 it, and it's still the basis for my belief as to how and
09:47:42 8 when it should be used and in what context.
09:47:45 9 Q Is your belief, as you just expressed it,
09:47:49 10 consistent with the position on the same issue taken by
09:47:52 11 Philip Morris?
09:47:53 12 MR. STONE: Objection; lacks foundation,
09:47:54 13 assumes facts not in evidence.
09:47:57 14 THE WITNESS: I'm not sure what you're
09:47:58 15 referring to.
09:47:59 16 BY MR. McGUIRE:
09:47:59 17 Q You mean you don't understand the question?
09:48:05 18 A I guess that's correct.
09:48:09 19 Q Okay. What I'm asking you is whether your
09:48:12 20 position that you just provided us with regarding
09:48:15 21 cigarette equivalents is the same position or similar --
09:48:22 22 I'll change that to identical to the position taken by the
09:48:25 23 company?
09:48:25 24 MR. STONE: Objection; assumes facts not in
09:48:26 25 evidence; namely, that the company has taken a position on
09:48:30 26 that question. Lacks foundation.
09:48:32 27 THE WITNESS: And that's the part of the
09:48:33 28 question I don't understand, that Philip Morris has taken
Vail, Christians & Associates (619)544-8344 220
09:48:36 1 a position on that.
09:48:36 2 BY MR. McGUIRE:
09:48:36 3 Q Have they taken a position on that?
09:48:39 4 A I'm not aware of it.
09:48:41 5 Q Did you ever express the position taken on
09:48:43 6 cigarette equivalents while you were a full-time employee
09:48:46 7 of Philip Morris?
09:48:47 8 A Yes, sir.
09:48:48 9 Q Have you ever taken that position in hearings
09:48:50 10 before political bodies?
09:48:51 11 A I've never been before a political body and
09:48:55 12 been asked that question, that I can recall.
09:48:57 13 Q Have you written documents to public health
09:49:01 14 organizations, taking that position as part of a critique
09:49:05 15 of other reports that the agency is relying on?
09:49:14 16 A Which -- which agency? Any agency?
09:49:15 17 Q Yes.
09:49:16 18 A I don't believe I've taken a position one way
09:49:18 19 or another, because it was in my opinion and the

09:49:23 20 scientists within Philip Morris, it was not something we
09:49:27 21 would use or rely on one way or another.
09:49:29 22 Q Are you familiar with the budget for R&D at
09:49:41 23 Philip Morris for this year?
09:49:44 24 A Philip Morris USA?
09:49:46 25 Q USA.
09:49:47 26 A Generally speaking.
09:49:48 27 Q And are you familiar with the budget for
09:49:54 28 advertising and promotion for this year?
Vail, Christians & Associates (619)544-8344 221
09:49:57 1 A No.
09:49:57 2 Q Were you ever -- did you ever know what the
09:50:01 3 budget for advertising and promotion was?
09:50:05 4 A No.
09:50:05 5 Q Did you ever answer any questions under oath
09:50:08 6 from attorneys representing Philip Morris where you
09:50:11 7 expressed an opinion as to what the ratio was between the
09:50:15 8 R&D budget and the advertising and promotion budget?
09:50:19 9 A By attorneys for Philip Morris?
09:50:23 10 Q Yes.
09:50:24 11 A Not that I remember.
09:50:25 12 Q Did you ever answer a similar question by --
09:50:28 13 from attorneys representing plaintiffs?
09:50:30 14 A I was asked questions. I can remember at
09:50:34 15 least on one occasion about that. Whether I actually had
09:50:39 16 an opportunity to answer it or not, I don't remember. All
09:50:42 17 I remember is there were probably a large series of
09:50:45 18 objections going back and forth between -- between the
09:50:48 19 lawyers. But I don't believe I've ever had knowledge of
09:50:54 20 what the advertising and promotion -- promotional budget
09:50:58 21 was for Philip Morris. So I don't believe I could have
09:51:01 22 answered that question, lacking that information.
09:51:03 23 Q Let me see if I can refresh your memory.
09:51:07 24 Do you recollect testifying that the R&D
09:51:09 25 budget was one percent or less of the advertising and
09:51:12 26 promotional budget?
09:51:14 27 A I could have.
09:51:15 28 Q Is that consistent with your memory?
Vail, Christians & Associates (619)544-8344 222
09:51:18 1 A Mr. McGuire, if I said it, I said it. I
09:51:26 2 guess, it's in the record. As I sit here today, I can
09:51:29 3 tell you I don't know what the advertising and promotion
09:51:34 4 budget is for Philip Morris USA.
09:51:37 5 Q Did you at one time know that?
09:51:38 6 A I don't think so.
09:51:39 7 Q Have you ever answered any interrogatories or
09:51:46 8 assisted in answering any interrogatories in this case?
09:51:50 9 A I think the answer is yes.
09:51:52 10 Q Do you know which ones?
09:51:54 11 A The ones that I'm responsible for here. If I
09:52:04 12 understand your question.
09:52:04 13 Q Did you sign any interrogatory answers under
09:52:12 14 penalty of perjury?
09:52:16 15 MR. STONE: He did not.
09:52:17 16 MR. MCGUIRE: He did not.
09:52:19 17 THE WITNESS: Thank you.
09:52:19 18 MR. MCGUIRE: Do you know if he was listed as
09:52:21 19 a --
09:52:21 20 MR. STONE: I don't believe he was.
09:52:23 21 MR. MCGUIRE: -- preparer?
BY MR. MCGUIRE:
09:52:24 22 Q I'd like to talk now briefly or maybe not so
09:52:30 24 briefly, depending on how these things go, with respect to

09:52:33 25 Exhibit 4017 that was identified yesterday.
09:52:36 26 Did you have a chance to look at that
09:52:37 27 document --
09:52:38 28 MR. STONE: I'll object.
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09:52:39 1 BY MR. McGUIRE:
09:52:39 2 Q -- last evening?
09:52:41 3 MR. STONE: I'm going to object to any use of
09:52:43 4 Exhibit 4017 on the grounds that it's not authentic. It's
09:52:46 5 not complete. It's not a document that appears to have
09:52:50 6 emanated in this form from any of the parties to this
09:52:52 7 action. It appears, from its face, as I look at it, to
09:52:55 8 simply be somebody's transcription in part of some
09:52:59 9 document that they are purporting to transcribe.
09:53:02 10 So I object to it on the grounds of
09:53:05 11 authenticity and the other grounds stated. It's also
09:53:10 12 hearsay.
09:53:10 13 MR. RICHARDSON: I join in those objections.
09:53:11 14 The document appears to be authored by an employee of a
09:53:15 15 nonparty to this action. And on that basis, as well as
09:53:19 16 the others mentioned by Mr. Stone, I join in his
09:53:22 17 objections.
09:53:23 18 MR. MILES: Join.
09:53:26 19 MR. LENDRUM: I'll join as well.
09:53:28 20 MR. McGUIRE: How unusual.
BY MR. McGUIRE:
09:53:30 21 Q Now that we all joined, do you have the
09:53:33 23 question in mind?
09:53:34 24 A No. Please repeat.
09:53:36 25 Q Okay. I don't know if I even had a question.
09:53:42 26 MR. STONE: The question was have you had an
09:53:44 27 opportunity to review Exhibit 4017, if that helps you out.
09:53:47 28 MR. McGUIRE: Thank you.
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09:53:48 1 MR. STONE: And can I just have my objection
09:53:49 2 running to this line so I don't have to interrupt?
09:53:51 3 MR. McGUIRE: Absolutely. And everybody can
09:53:53 4 join too.
09:53:54 5 THE WITNESS: I have briefly looked at this
09:53:56 6 document.
09:53:56 7 BY MR. McGUIRE:
09:53:56 8 Q Was this -- was it last night that you looked
09:53:59 9 at it?
09:53:59 10 A Actually, yesterday, when you gave it to me,
09:54:02 11 and a little bit right now.
09:54:04 12 Q Okay. Had you seen this document ever before?
09:54:06 13 A No.
09:54:06 14 Q By the way, did you review any documents in
09:54:10 15 preparation for coming here and giving testimony as a
09:54:13 16 person most knowledgeable?
09:54:15 17 A Specifically as it relates to this
09:54:21 18 deposition, no. But I look at, I review papers on a daily
09:54:30 19 basis. And some of those papers I reviewed turns out are
09:54:33 20 relevant to some of the questions you've asked me.
09:54:36 21 But did I specifically do it, read those
09:54:39 22 things for this -- these answers, no. It turned out
09:54:44 23 coincidental, in my mind, for some of the things that I
09:54:48 24 read, they're of some value here.
09:54:50 25 Q Okay. Have we discussed any of those things
09:54:52 26 that you read that were of some value yesterday?
09:54:54 27 A Yes, sir, we did.
09:54:55 28 Q Okay. Do you know -- or have you ever met
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09:55:01 1 any of the individuals who are listed as being present at
09:55:04 2 this meeting?

09:55:06 3 MR. STONE: Objection; assumes facts not in
09:55:08 4 evidence, in addition to my other objections.

09:55:11 5 THE WITNESS: Yes.

09:55:11 6 BY MR. McGUIRE:

09:55:11 7 Q Who do you know other than who you talked
09:55:15 8 about -- we talked about yesterday? Instead of doing
09:55:19 9 that, let me just change the question.

09:55:20 10 Who do you know?

09:55:24 11 A Thank you.

09:55:25 12 Dr. Helmut Gaisch and Dr. -- I guess the 'S'
09:55:30 13 is Dr. Sharon Bose. And I wouldn't say I know him, but I
09:55:36 14 have met him on at least one occasion. And that's
09:55:39 15 Mr. Remes.

09:55:45 16 Q Do you have any information that this
09:55:52 17 document does not accurately reflect the substance of a
09:55:56 18 meeting that occurred on February 17, 1988?

09:56:00 19 MR. STONE: Objection; calls for speculation,
09:56:02 20 lacks foundation. He wasn't employed by Philip Morris
09:56:04 21 even at that time. Outside the area in which this witness
09:56:07 22 has been designated to testify.

09:56:09 23 MR. RICHARDSON: Join in the objection.

09:56:10 24 MR. MILES: Join.

09:56:13 25 THE WITNESS: I've not seen this -- this
09:56:15 26 document before. Though, I have heard reference --
09:56:22 27 reference to the question you're talking about, as it
09:56:26 28 relates to this particular document. But, as I said

09:56:33 1 Vail, Christians & Associates (619)544-8344 226
09:56:43 2 earlier, this, in 1993, when I became responsible for ETS,
09:56:46 3 was not part of the efforts that I was involved in from
09:56:48 4 '93, forward, with regard to ETS.

09:56:48 5 BY MR. McGUIRE:

09:56:48 6 Q Who did you take over for, when you say "when
09:56:54 7 I became responsible"? Who was responsible for the ETS
09:56:59 8 efforts before you?

09:57:00 9 MR. STONE: Objection; asked and answered
09:57:02 10 yesterday.

09:57:02 11 THE WITNESS: For a period of time, Dr. Jim
09:57:05 12 Charles, vice-president of research.

09:57:11 12 BY MR. McGUIRE:

09:57:11 13 Q And what about before him?

09:57:15 14 MR. STONE: Objection; asked and answered.

09:57:18 15 THE WITNESS: I'm not sure. I don't -- I
09:57:21 16 don't know. It may have been Dr. Tom Osdene, but I'm not
09:57:25 17 sure.

09:57:25 18 BY MR. McGUIRE:

09:57:25 19 Q What were you told the global strategy
09:57:35 20 regarding ETS was in 1993 when you became responsible for
09:57:41 21 ETS issues?

09:57:44 22 A I don't think anybody sat down and said to
09:57:47 23 me, Richard, this is our global strategy. What I was --
09:57:52 24 what I was given was an assignment to coordinate on a
09:57:55 25 worldwide basis our research efforts with regard to ETS
09:58:01 26 and be able to provide the company a critical evaluation
09:58:05 27 of the scientific literature and make recommendations as
09:58:09 28 to what kinds of research the company ought to be -- ought

09:58:14 1 Vail, Christians & Associates (619)544-8344 227
09:58:16 2 to be engaged in.

09:58:19 3 And as part of that, made recommendations to
09:58:23 4 the company as to our view of the science as it might
09:58:27 5 relate to the company's positions on these questions.

09:58:27 5 Q When you took over in 1993, were you the

09:58:31 6 coordinating scientist for the USA?
09:58:33 7 MR. STONE: Objection; vague and ambiguous.
09:58:34 8 THE WITNESS: I was the coordinating
09:58:36 9 scientist for our worldwide efforts, not just the United
09:58:40 10 States.
09:58:40 11 BY MR. McGUIRE:
09:58:40 12 Q Are you aware of any documents that were
09:58:58 13 issued by Philip Morris between 1988 and 1993 that
09:59:05 14 indicate that Philip Morris is abandoning the strategy of
09:59:11 15 keeping the controversy alive, as indicated in Exhibit
09:59:15 16 4017?
09:59:16 17 MR. STONE: Same objections regarding the
09:59:18 18 exhibit. Also hearsay, compound, assumes facts not in
09:59:20 19 evidence, lacks foundation, calls for speculation.
09:59:24 20 MR. RICHARDSON: Join in the objection.
09:59:26 21 MR. MILES: Join.
09:59:28 22 THE WITNESS: Since I've not seen this
09:59:29 23 document and since I was not aware that there, as you put
09:59:34 24 it, was a global strategy, if I would have seen a document
09:59:39 25 that somehow repudiated what I hadn't seen before, I
09:59:42 26 probably would have asked the question of what does this
09:59:45 27 mean. But I never understood this to be our global
09:59:50 28 strategy. And your question is unanswerable since this
Vail, Christians & Associates (619)544-8344 228
10:00:03 1 was not what I was made aware of in terms of what my
10:00:07 2 responsibilities were supposed to be.
10:00:08 3 BY MR. McGUIRE:
10:00:08 4 Q Did you ever talk to Sharon Bose, Dr. Bose,
10:00:15 5 about the global strategy?
10:00:19 6 A I think I've spoken to Dr. Bose twice in ten
10:00:25 7 years, and it was in the form of good morning and then
10:00:31 8 good afternoon. I believe that I never had, nor have I
10:00:40 9 heard her at any of these meetings, have any substantive
10:00:48 10 contributions to the meetings, other than social
10:00:52 11 commentary.
10:00:56 12 Oh. Sorry. I saw her one other time in a
10:01:06 13 litigation environment unrelated to environmental tobacco
10:01:11 14 smoke, and we just said hello in passing.
10:01:15 15 Q Presently, Philip Morris has a group of
10:01:18 16 scientists that critically review the scientific
10:01:21 17 literature of ETS, correct?
10:01:24 18 A Yes.
10:01:24 19 MR. STONE: Objection; asked and answered
10:01:26 20 yesterday.
10:01:27 21 BY MR. McGUIRE:
10:01:31 22 Q Isn't it true that the purpose of doing that
10:01:33 23 is to keep the controversy alive?
10:01:35 24 MR. STONE: Objection; asked and answered,
10:01:36 25 argumentative, assumes facts not in evidence, vague and
10:01:39 26 ambiguous.
10:01:45 27 THE WITNESS: As I have tried to answer on a
10:01:47 28 number of occasions, most recently maybe two questions
Vail, Christians & Associates (619)544-8344 229
10:01:49 1 ago, the purpose of our evaluations of the scientific
10:01:54 2 literature are at least twofold: one, to make sure that
10:02:02 3 if we feel there are gaps that need to be filled, research
10:02:06 4 gaps, that we try to do that, primarily through outside
10:02:12 5 funding, though not limited to outside funding.
10:02:14 6 The second is that based on our evaluations
10:02:17 7 and/or any research that we've ended up supporting, is to
10:02:22 8 go back to the company and speak to the necessary people
10:02:27 9 about any recommendations we would have regarding the
10:02:30 10 science and any potential positions the company might want

10:02:35 11 to consider taking with regard to some of these questions.
10:02:37 12 So in terms of keeping the controversy alive,
10:02:48 13 your point, I would say, that that was not in or on the
10:02:53 14 radar screen for the Philip Morris scientists that were
10:02:58 15 employed to engage in the evaluation of ETS studies.
10:03:02 16 BY MR. McGUIRE:
10:03:02 17 Q As of 1993?
10:03:04 18 A Yes.
10:03:04 19 Q Aren't you keeping the controversy alive
10:03:15 20 today, by virtue of the positions that have been taken
10:03:19 21 regarding the Cal EPA report and other reports that we've
10:03:25 22 marked as exhibits yesterday, the 9th Report on
10:03:28 23 Carcinogens, for example?
10:03:31 24 MR. STONE: Objection; vague and ambiguous,
10:03:33 25 argumentative, assumes facts not in evidence, lacks
10:03:35 26 foundation.
10:03:37 27 THE WITNESS: I think for those people in the
10:03:39 28 world that want to move through it and in the process
10:03:45 1 Vail, Christians & Associates (619)544-8344 230
10:03:51 2 think about things, one always asks questions. And
10:03:55 3 sometimes those questions agree with what other people say
10:03:57 4 and sometimes they don't. I think it's a human
10:04:02 5 prerogative, and it's part of the basis for the freedoms
10:04:04 6 that are enjoyed in this company.
10:04:07 7 And so if we disagree with something, that's
10:04:17 8 based on factual information, not for any subrosea
10:04:20 9 purpose, keeping the controversy alive has a rather
egregious connotation to it.
10:04:22 10 But disagreement and dispute is a natural
10:04:26 11 part of scientific discussion, and that's all we're
10:04:28 12 engaging in.
10:04:29 13 BY MR. McGUIRE:
10:04:29 14 Q How come you haven't been able to convince
10:04:32 15 any public health organization to come around to your view
10:04:35 16 of things?
10:04:36 17 MR. STONE: Objection; lacks foundation,
10:04:38 18 calls for speculation, assumes facts not in evidence.
10:04:42 19 It's compound and vague and ambiguous.
10:04:44 20 You can answer.
10:04:44 21 THE WITNESS: I think what we have here is a
10:04:47 22 dichotomy in perspective between public health
10:04:53 23 organization -- public health organizations and scientists.
10:04:56 24 And this is -- this is best -- best expressed
10:05:00 25 in a variety of public health publications and policy --
10:05:05 26 policy decisions. And if you want me to go into that in
10:05:10 27 more detail, I will.
10:05:11 28 But suffice it, at least for me to say, that
10:05:16 1 Vail, Christians & Associates (619)544-8344 231
10:05:20 2 from a public health perspective, there is -- has been an
10:05:24 3 expressed position that they don't have to cross every 'T'
10:05:29 4 and dot every 'I' to put forward a public health policy.
10:05:33 5 They don't have to understand how things might or might
10:05:35 6 not be doing it. It's sufficient that somebody has raised
10:05:39 7 a red flag, and they will act -- act upon that.
10:05:43 8 I'm not being critical of it. I think in
10:05:46 9 terms of the public good and the protection of the public
10:05:52 10 good, that is not an incorrect or irresponsible thing to
10:05:59 11 make. But let's not make it on the back of inconclusive
10:06:02 12 or marginal scientific information.
10:06:02 13 BY MR. McGUIRE:
10:06:05 14 Q Have you ever discussed the problem of
10:06:15 15 attribution, with the scientists at INBIFO or Neuchatel?
MR. STONE: Objection; vague and ambiguous,

10:06:16 16 argumentative.
10:06:18 17
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10:09:36 9
10:09:40 10
10:09:43 11
10:09:50 12
10:09:53 13
10:09:59 14
10:10:03 15
10:10:06 16
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THE WITNESS: The question of attribution is an important question, and it is one in which there is a company policy on. And discussions that relate to it is to provide assurances that any investigator that takes money from Philip Morris and publishes information needs to provide attribution as to whether that money was in toto or, in part, contributory towards their efforts.

So it's a company policy. We -- we've had and I think continue to have discussions to try to ensure that those policies -- that policy is followed.

BY MR. McGuire:

Q When did the company adopt this policy that Vail, Christians & Associates (619)544-8344 232 you've just stated?

A In the time that I've -- I've been employed, for sure, when I became involved with the ETS, part of my responsibility, it was -- there were several direct pronouncements about this. Whether there were other policies prior to that, I don't know. There could have been. Maybe there were. Maybe there weren't.

But I know by the time I got involved in ETS, there was a lot of attention being paid to that.

Q Are you saying that after 1993, there was never a scientific report that was referenced by Philip Morris that did not clearly attribute Philip Morris' involvement in -- from a monetary standpoint in that work?

MR. STONE: Objection -- let me just make my objections. Argumentative as to form. Overbroad and lacks foundation.

THE WITNESS: Well, I can't say ever. All I can tell you is what I just previously answered, that the intent was to try to ensure that that policy was -- was followed. Could some things have fallen through the cracks? Yes. Did some things fall through the cracks? I'm at least aware of one that I became aware of and immediately brought it to the proper people's attention. And that didn't happen again. But the policy was put in place. We tried to ensure that that happened. Was it 100-percent foolproof? There is at least one example that I can remember right now in which it didn't happen.

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BY MR. McGuire:

Q Okay. Would you tell me when that was and who was involved.

A Well, I'd have to go back and look at the date of the publication, but it was a publication by Drs. Gratt and Chappelle, doing a sort of an interesting kind of temporal meta analysis, using ETS studies as an example.

I read this article. I said, oh, this is -- this is great. And then I looked at the attribution, and there was no attribution. So I immediately called up, and the authors were contacted. And they apologized for the -- for leaving that off and said it would never -- it would never happen -- it would never happen again. And I did not follow up any more on that.

Q How do you spell the first doctor that was the first author?

A G- -- I think it's G-r-a-t-t.

Q Is that a 1997 article?

A If you have the title, that might -- that

10:10:24 21 might help.
10:10:25 22 Q I know the name is familiar.
10:10:27 23 Does that fit temporally with what your
10:10:30 24 memory is, 1997?
10:10:32 25 A It's in the -- that time frame. But whether
10:10:35 26 it's that publication or -- we'd have to look at the
10:10:40 27 title. That would help me.
10:10:41 28 Q Other than the Gratt article, are there
10:10:45 1 Vail, Christians & Associates (619)544-8344 234
10:10:49 2 any -- well, that's the only one you said you could
remember at this time; is that correct?
10:10:49 3 A Yes.
10:10:50 4 Q Is that the only one that you have a
10:10:52 5 recollection of bringing to the attention of the authors,
10:10:56 6 the lack of attribution?
10:11:00 7 A That I did, yes.
10:11:01 8 Q Do you know of anyone else who has brought to
10:11:05 9 the attention of authors that their failure to attribute
10:11:10 10 the financial support for their work to Philip Morris or
10:11:16 11 any agent -- outside agent of Philip Morris who was used
10:11:23 12 to fund the research?
10:11:26 13 MR. STONE: Objection; compound, vague and
10:11:27 14 ambiguous.
10:11:30 15 THE WITNESS: I don't know the answer to that
10:11:32 16 question.
10:11:32 17 BY MR. McGUIRE:
10:11:32 18 Q Do you mean you don't know of anyone else who
10:11:41 19 brought to the attention failure to attribute support from
10:11:46 20 Philip Morris?
10:11:48 21 MR. MILES: Assumes facts the way it's
10:11:49 22 worded.
10:11:49 23 BY MR. McGUIRE:
10:11:49 24 Q You said, "I don't know the answer."
10:11:54 25 A I don't know whether anybody has or hasn't
10:11:59 26 is what I meant by my answer.
10:12:00 27 Q Okay. And you cannot give me any better date
10:12:04 28 as to -- you didn't give me a date. You said I don't
Vail, Christians & Associates (619)544-8344 235
10:12:07 1 remember the date. But was the policy that you discussed
10:12:13 2 implemented shortly before you left the company?
10:12:18 3 A No. As I answered earlier, it was in place
10:12:22 4 when I was employed.
10:12:23 5 Q The attribution?
10:12:25 6 A Yes, sir.
10:12:26 7 Q In place in 1988 -- excuse me -- '89?
10:12:30 8 A I don't know if it was in place in '89. It
10:12:33 9 was in place when I took over in '93.
10:12:38 10 Q Was Dr. Charles still working there in 1993,
10:12:46 11 working at Philip Morris?
10:12:47 12 A No. He had retired, I believe.
10:12:48 13 Q If you turn to the second page, the second
10:13:08 14 full paragraph, which begins, "The consultants should,
10:13:15 15 ideally, according to Philip Morris, be European
10:13:19 16 scientists," et cetera.
10:13:22 17 MR. STONE: Same objections to the document.
10:13:25 18 THE WITNESS: I'm sorry. I was -- my mind
10:13:28 19 was focusing on this. Would you mind. So the second full
10:13:33 20 paragraph starting with?
10:13:37 21 BY MR. McGUIRE:
10:13:37 22 Q "The consultants should." If you would read
10:13:42 23 that to yourself.
10:13:44 24 MR. RICHARDSON: Join in the objection.
10:13:47 25 MR. MILES: Join.

10:13:48 26 BY MR. McGUIRE:
10:13:48 27 Q Does this in any way also describe the effort
10:14:08 28 that -- that was under way while you were in charge of
Vail, Christians & Associates (619)544-8344 236
10:14:10 1 ETS?
10:14:11 2 MR. STONE: Objection; improper as to form,
10:14:14 3 hearsay, in addition to my other objections.
10:14:16 4 You can answer.
10:14:17 5 THE WITNESS: In 1993, whereabouts I was
10:14:22 6 given responsibility for this program, we started an
10:14:25 7 internal review under my initiative with regard to
10:14:30 8 scientists the company was using around the world with
10:14:34 9 regard to environmental tobacco smoke.
10:14:37 10 As a result of that review and analysis, a
10:14:43 11 significant number of the scientists that -- outside
10:14:47 12 scientists that had been used as consultants were
10:14:51 13 dropped -- were dropped as consultants. And we then, as
10:14:56 14 part of that, initiated our own program for finding
10:15:00 15 scientists and individuals that we felt were -- how should
10:15:09 16 I -- how should I put this? More relevant for the issues
10:15:12 17 that we were moving -- we were moving forward on.
10:15:16 18 So I'm not aware of this, but I -- I can tell
10:15:24 19 you, as I sit here today, answering this question, we
10:15:30 20 reordered our house with regard to outside -- outside
10:15:36 21 scientists based on criteria that we had established in
10:15:41 22 terms of what our efforts were going to be under the
10:15:44 23 program that I was responsible for.
10:15:45 24 BY MR. McGUIRE:
10:15:45 25 Q Were any of the scientists that dropped
10:15:58 26 working for INBIFO?
10:16:00 27 A Are you asking me were they employees of
10:16:04 28 INBIFO?
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10:16:04 1 Q Yes, sir.
10:16:05 2 A INBIFO is part of Philip Morris, and the
10:16:09 3 consultants I thought we were talking about were people
10:16:12 4 that were not employees of Philip Morris.
10:16:14 5 Q I know.
10:16:15 6 Did you drop any scientists from INBIFO as
10:16:18 7 part of your review of the program?
10:16:20 8 A Not that I'm aware of. No, absolutely not.
10:16:28 9 Q And what was the criteria that you used to
10:16:30 10 drop a scientist who was an outside scientist?
10:16:40 11 A The criteria involved the quality of their
10:16:48 12 publications in the peer -- peer-reviewed literature and
10:16:55 13 the fact that we were looking to broaden the areas of
10:17:03 14 interest that we needed some help on scientifically to try
10:17:09 15 to understand some things.
10:17:13 16 And so if we had four people that were of the
10:17:17 17 same kind, we didn't need four people doing the same
10:17:21 18 thing. We only probably needed one.
10:17:22 19 And then I took the three other slots with
10:17:28 20 the dollars associated with those three other slots, and I
10:17:32 21 went and my colleague scientists went out and found three
10:17:35 22 other kinds of people with three other kinds of expert --
10:17:38 23 expertise. So we went out, and we got, as consultants,
10:17:44 24 highly qualified statisticians, for example. We went out,
10:17:50 25 and we got very specific kinds of indoor air quality
10:17:53 26 engineers. We went out, and we got analytical chemists
10:18:01 27 with speciality in measuring constituents in an aerosol
10:18:08 28 or air matrix, for example.
Vail, Christians & Associates (619)544-8344 238
10:18:09 1 Q Why is it important that peer-reviewed

10:18:18 2 literature be utilized?
10:18:23 3 A There's nothing wrong with nonpeer-reviewed
10:18:27 4 literature. So get that out on the table.
10:18:33 5 Peer review provides another potential level
10:18:40 6 of analysis by outside individuals, hopefully outside of
10:18:46 7 the company or the industry, and what we were looking for
10:18:55 8 was to be supporting research that would have a wide -- a
10:19:03 9 wide impact. And for a number of reasons, peer-reviewed
10:19:10 10 literature -- or manuscripts that are accepted in
10:19:14 11 peer-review journals give you that. So you have at least
10:19:16 12 two things going on.
10:19:17 13 One, you have an independent -- hopefully
10:19:20 14 independent assessment of the data. And, two, the use of
10:19:29 15 information that's published in the peer-reviewed journal
10:19:34 16 oftentimes has a stronger impact than information in
10:19:37 17 nonpeer reviewed. Though, as I said earlier, because
10:19:43 18 things are in nonpeer-reviewed literature doesn't mean
10:19:47 19 there's anything necessarily wrong -- wrong with it.
10:19:49 20 Q So the two reasons that you gave me, however,
10:19:56 21 are the two things that are wrong with nonpeer-reviewed
10:19:59 22 literature, in your opinion, correct?
10:20:01 23 MR. STONE: Objection; misstates the
10:20:02 24 witness's testimony. Argumentative.
10:20:04 25 THE WITNESS: I didn't say there was
10:20:08 26 anything wrong with nonpeer-reviewed literature.
10:20:10 27 BY MR. McGUIRE:
10:20:10 28 Q Okay. Let me change it.
Vail, Christians & Associates (619)544-8344 239
10:20:12 1 The two things that you stated are what's
10:20:14 2 lacking in nonpeer-reviewed literature, correct?
10:20:17 3 A What limits in some people's minds the
10:20:22 4 usefulness of that information.
10:20:24 5 Q The program that is described in the next
10:20:51 6 paragraph as well, can you tell me whether this program of
10:21:00 7 using scientists to operate within the confines of
10:21:03 8 decisions taken by Philip Morris scientists and then
10:21:08 9 having the work filtered by lawyers to eliminate areas of
10:21:11 10 sensitivity, is that something that at one time was
10:21:15 11 employed by Philip Morris, to your knowledge?
10:21:17 12 MR. STONE: Objection; improper use of the
10:21:19 13 document, subject to the objections I made earlier to
10:21:24 14 which I have a continuing objection. Object to the form
10:21:26 15 of the question, assumes facts not in evidence, compound,
10:21:29 16 vague and ambiguous, lacks foundation.
10:21:33 17 MR. RICHARDSON: Join in the objection.
10:21:34 18 MR. MILES: Join.
10:21:36 19 THE WITNESS: As to this paragraph, which is
10:21:41 20 one sentence, speaking from my personal -- personal
10:21:45 21 experience, this was not how -- how we operated.
10:21:52 22 Did people, prior to me taking over, operate
10:21:55 23 in this way? I'm not sure what the word "filtered" --
10:21:59 24 "filtered" means. And I'm not sure what the word -- what
10:22:02 25 the phrase "operate within the confines of decisions taken
10:22:06 26 by Philip Morris scientists."
10:22:11 27 I would say there's more than ample evidence,
10:22:14 28 prior to me taking over, that we were directly or
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10:22:18 1 indirectly reporting research that was -- the outcome of
10:22:28 2 which was unknown to us, which is sort of why you do
10:22:31 3 research.
10:22:31 4 So I don't know how you can be so omniscient
10:22:37 5 to be able to predetermine what the outcome is going to
10:22:39 6 be. So this -- this doesn't make sense.

10:22:43 7 And in any event, the role of lawyers with
10:22:45 8 regard to Philip Morris scientists only occurred when the
10:22:50 9 scientists were dealing with scientific facts within a
10:22:54 10 regulatory -- regulatory question or potential regulatory
10:23:00 11 question or a response to a state or federal agency.
10:23:05 12

BY MR. McGUIRE:

10:23:05 13 Q That's a pretty broad area, isn't it?
10:23:09 14 MR. STONE: Objection; argumentative, vague
10:23:10 15 and ambiguous.

10:23:10 16 BY MR. McGUIRE:

10:23:10 17 Q Can you think of any research that Philip
10:23:13 18 Morris has done that wouldn't fall under one of those
10:23:17 19 umbrellas that you just opened up?

10:23:19 20 MR. STONE: Objection; vague and ambiguous,
10:23:21 21 lacks foundation. I don't know what umbrellas we're
10:23:24 22 talking about.

10:23:25 23 BY MR. McGUIRE:

10:23:25 24 Q Something that may deal with scientific facts
10:23:27 25 within a regulatory or potential regulatory question or a
10:23:32 26 response to a state or federal agency or potential
10:23:35 27 response to a state or federal agency.

10:23:37 28 MR. STONE: That's not what he said.

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10:23:39 1 Misstates the witness's testimony, argumentative and
10:23:41 2 compound.

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10:23:41 3 BY MR. McGUIRE:

10:23:41 4 Q I just described the umbrellas a little more
10:23:45 5 specifically.

10:23:45 6 A So is there a question?

10:23:48 7 MR. STONE: I don't know if there is one.

10:23:49 8 BY MR. McGUIRE:

10:23:49 9 Q I said, yes, can you think of anything that
10:23:52 10 Philip Morris does that wouldn't either potentially or
10:23:55 11 actually involve one of these areas?

10:23:58 12 MR. STONE: Same objections.

10:23:59 13 You can answer.

10:24:00 14 THE WITNESS: Let me be more specific.

10:24:01 15 When OSHA filed a notice of proposed rule
10:24:04 16 making, lawyers and Philip Morris scientists got together
10:24:12 17 with regard to the response the company was going to make.

10:24:17 18 When NTP asked for public comments, the
10:24:21 19 scientists put together their information. The lawyers
10:24:25 20 put together whatever it was that lawyers do. And the
10:24:31 21 same thing with California. And all I'm saying, within
10:24:34 22 the context of those specific situations, lawyers and
10:24:37 23 scientists within the company got together.

10:24:41 24 In terms of daily operation of what the
10:24:46 25 scientists were doing with regard to outside scientific
10:24:49 26 research or outside scientists, I would say lawyer --
10:25:01 27 lawyer contact was not a part -- a part of the process.

10:25:09 28 And whatever filtering means.

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10:25:18 1 BY MR. McGUIRE:

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10:25:18 2 Q How long did Philip Morris continue to
10:25:19 3 monetarily support Professor Parry?

10:25:25 4 A Who?

10:25:26 5 Q Professor Parry.

10:25:29 6 A How do you spell his name?

10:25:30 7 Q P-a-r-r-y.

10:25:31 8 A I'm not aware of any Dr. Parry with that
10:25:37 9 spelling that Philip Morris has supported.

10:25:41 10 Q What's TAC?

10:25:44 11 A That's a UK organization that I think has

10:25:56 12 tobacco company membership.
10:25:57 13 Q What does it stand for?
10:25:59 14 A Tobacco Advisory Council, if that's what
10:26:03 15 you're --
10:26:03 16 Q Is that still in existence?
10:26:05 17 A I have no idea. If we're talking about the
10:26:07 18 UK entity, if that's what we're talking about. If you can
10:26:16 19 point me to it, it might -- it might help.
10:26:19 20 Q Sure.
10:26:19 21 The next-to-the-last paragraph on -- I'll
10:26:21 22 read it. "In respect of Professor Parry, Dr. Gaisch said
10:26:26 23 that he strongly believed TAC should continue to support
10:26:30 24 him because it could be problematic to withdraw support
10:26:33 25 from a scientist who has been sympathetic to the
10:26:36 26 industry."
10:26:36 27 MR. STONE: Objection; hearsay. Also object
10:26:38 28 on the grounds I've previously stated as to Exhibit 4017.
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10:26:44 1 MR. MILES: Join.
10:26:44 2 MR. RICHARDSON: Join in the objection.
10:26:46 3 THE WITNESS: Again, I'm not aware of any
10:26:49 4 funding support for a Dr. Parry, as described -- as
10:26:54 5 described here. And I believe that the TAC we're talking
10:26:57 6 about is this UK industry organization.
10:27:01 7 BY MR. McGUIRE:
10:27:01 8 Q There is a list of potential consultants in
10:27:26 9 this document.
10:27:28 10 How many of these consultants have actually
10:27:33 11 performed work for the tobacco industry, if you know?
10:27:38 12 MR. STONE: Same objections previously
10:27:39 13 asserted with respect to the document, and this is an
10:27:41 14 improper use of the document that's otherwise
10:27:44 15 inadmissible.
10:27:45 16 MR. RICHARDSON: Join in the objection.
10:27:47 17 MR. MILES: Join.
10:27:49 18 THE WITNESS: Well, some of this is
10:27:51 19 impossible to discern.
10:27:53 20 BY MR. McGUIRE:
10:27:53 21 Q I'll read the names to you.
10:27:55 22 A No, I can read the names. I'm looking at the
10:27:59 23 parenthetical. For instance, on the first one, it says "a
10:28:01 24 pathologist at," and then a series of question marks,
10:28:05 25 "possibly BIBRA." I know a W. Butler, but he's not a
10:28:09 26 pathologist. And the W. Butler I know has done work for
10:28:18 27 R.J. Reynolds and submitted, I believe, documents to both
10:28:23 28 NTP and I believe to Cal EPA as well.
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10:28:26 1 Is this the same W. Butler, I don't have -- I
10:28:26 2 don't have a clue.
10:28:34 3 Looking down this list, I mean, I would
10:28:39 4 assume -- and this is just a guess -- that the name Frank
10:28:48 5 Sullivan, says "a consultant to Rothmans," we have had --
10:28:53 6 Philip Morris has had a Dr. Frank Sullivan in Australia
10:28:58 7 prepare a review at our request on ETS and SIDS, which I'm
10:29:06 8 hoping will be published. Whether that's the same Frank
10:29:09 9 Sullivan or not, I don't know.
10:29:12 10 And those would be the only names on this
10:29:18 11 list that I can speak to in terms of names that I
10:29:24 12 recognize. Now, whether these are those people or not, I
10:29:28 13 don't know.
10:29:28 14 Q Have you ever worked with any attorneys whose
10:29:45 15 responsibility it was to coordinate ETS activities in a
10:29:50 16 geographic area? For example, do you know John Rupp?

10:29:59 17 A Yes. John Rupp I know primarily because he
10:30:06 18 was the general counsel for CIAR.
10:30:10 19 Q And do you know David -- oh. We asked that
10:30:21 20 yesterday, I think.
10:30:21 21 A Yes, we did.
10:30:23 22 Q Any other Covington and Burling lawyers who
10:30:29 23 were commissioned to coordinate Philip Morris' ETS
10:30:32 24 activities in the geographic areas that are set forth in
10:30:36 25 that paragraph?
10:30:37 26 MR. STONE: Objection; assumes facts not in
10:30:39 27 evidence, lacks foundation, argumentative in form,
10:30:43 28 improper use of the document, misstates the witness's
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prior testimony.
10:30:46 1 THE WITNESS: Yeah. I mean, I've not seen
10:30:48 2 this before, but I wanted to add that the other -- the
10:30:49 3 other place that I knew John Rupp was at the OSHA hearings
10:30:53 4 where he, I think, was representing The Tobacco Institute
10:30:57 5 with regard to examination of OSHA documents and OSHA
10:31:03 6 witnesses.
10:31:08 7
10:31:08 8 But to more fully answer your -- your
10:31:13 9 question, I -- I had met a Mr. Chuck or Charles Lister,
10:31:21 10 who is a Covington attorney in London. And he had a
10:31:30 11 number of things related to areas of interest to me. One
10:31:37 12 had to do with the basis for regulations in the --
10:31:44 13 MR. MILES: Can I insert -- interject an
10:31:47 14 objection. I'm concerned the witness may be going to
10:31:50 15 privileged areas in describing conversations with counsel.
10:31:55 16 MR. STONE: I guess that's a fair point. Why
10:31:59 17 don't I take a short break and just inquire of the
10:32:01 18 witness.
10:32:04 19 VIDEOGRAPHER: We are off the record. The
10:32:05 20 time is 10:32.
10:32:06 21 (Recess.)
10:44:04 22 VIDEOGRAPHER: We are back on the record.
10:44:10 23 The time is 10:44.
10:44:12 24 MR. STONE: Consistent with our discussion,
10:44:15 25 Dr. Carchman, you can complete your answer so long as you
10:44:18 26 don't reveal any privileged communications and just
10:44:21 27 complete the answer with respect to the subject. You
10:44:25 28 started to say one had the basis to do with regulations in
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10:44:29 1 the. You can complete that thought as to the subject of
10:44:32 2 your -- general subject of your conversation, without
10:44:35 3 revealing any privileged communications.
10:44:37 4 THE WITNESS: There were two topics. One
10:44:39 5 related to the basis for regulations in the Europe union,
10:44:44 6 and the second question was unrelated to ETS. And he
10:44:47 7 directed me to another Covington lawyer that was actually
10:44:50 8 able to help me on that topic. But, again, that was not
10:44:54 9 related to environmental tobacco smoke.
10:44:56 10 BY MR. McGUIRE:
10:44:56 11 Q Did the council for tobacco research -- well,
10:45:06 12 let me strike that and begin again.
10:45:09 13 Has Philip Morris ever reviewed and approved
10:45:17 14 through their legal department what research proposals
10:45:20 15 would be granted by the council for tobacco research?
10:45:23 16 MR. STONE: Objection; beyond the scope on
10:45:25 17 which this witness has been designated to testify, lacks
10:45:28 18 foundation, calls for speculation, assumes facts not in
10:45:30 19 evidence, and would invade -- in the event any of this had
10:45:36 20 occurred, would invade an area of which this witness's
10:45:39 21 knowledge of it would, I believe, have been derived from

10:45:41 22 privileged communications. And on the grounds that it
10:45:42 23 would invade privileged communications to determine any
10:45:45 24 knowledge this witness might or might not have, I instruct
10:45:49 25 the witness not to answer.

10:45:51 26 BY MR. McGUIRE:

10:45:52 27 Q Did -- before you left Philip Morris, were
10:45:55 28 there any representatives of the legal department that

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10:45:57 1 Vail, Christians & Associates (619)544-8344
10:46:02 2 reviewed and participated in the approval of research
10:46:07 3 proposals that would be granted by Philip Morris or any of
10:46:13 4 its research entities, INBIFO, the Neuchatel group, and
10:46:18 5 any other groups you have in any other foreign countries?

10:46:20 6 MR. STONE: You can answer that question to
10:46:22 7 the extent you can do so without revealing a privileged
10:46:24 8 communication. If, in your experience, something you were
10:46:31 9 actually involved with was reviewed or approved, as
10:46:33 10 described by Mr. McGuire, you can answer.

10:46:37 11 THE WITNESS: Let me see if I understand your
10:46:37 12 question.

10:46:42 13 Any of the research activities related to
10:46:48 14 ETS that the Philip Morris scientists were interested in
10:46:57 15 doing, whether it was at Neuchatel or INBIFO, or outside,
10:46:59 16 did it have to go through lawyers first?

10:46:59 17 BY MR. McGUIRE:

10:47:03 18 Q Not go through lawyers.

10:47:05 19 MR. STONE: Was there a representative of the legal
10:47:08 20 department that was part of the panel that approved these
10:47:09 21 kind of grants?

10:47:09 22 THE WITNESS: No.

10:47:10 23 MR. STONE: Objection; assumes facts not in
10:47:11 24 evidence.

10:47:11 25 BY MR. McGUIRE:

10:47:13 26 Q Did it have to go through lawyers after the
10:47:16 27 approval by the scientists?

10:47:17 28 MR. STONE: Same objections.

10:47:17 1 THE WITNESS: No.

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10:47:17 2 Vail, Christians & Associates (619)544-8344
10:47:19 3 BY MR. McGUIRE:

10:47:22 4 Q There was no approval by the legal department
10:47:23 5 of Philip Morris as to what research projects would be
10:47:25 6 granted; is that correct?

10:47:28 7 A Not that I'm aware of.

10:47:32 8 Q Were you involved in discontinuing --

10:47:34 9 MR. STONE: I didn't -- can I interrupt. I
10:47:34 10 didn't see an answer to the first question.

10:47:34 11 THE REPORTER: One moment.

10:47:34 12 MR. STONE: Do you have one?

10:47:34 13 MR. McGUIRE: What's the question?

10:48:13 14 MR. STONE: "Was there a representative of
10:48:13 15 the legal department that was part of the panel that
10:48:13 16 approved these kind of grants." I objected. I think the
10:48:13 17 answer -- I think the witness answered it "no," but he
10:48:13 18 answered it somewhat quietly about the time I objected.
10:48:13 19 Maybe at the same time. So if you would just review the
10:48:13 20 video on that, that will be fine. Thank you. I
10:48:13 21 understand we're looking at a rough transcript, and I
10:48:13 22 didn't mean to question it.

10:48:13 23 THE REPORTER: Okay. Thank you.

10:48:13 24 MR. STONE: Thank you.

10:48:13 25 BY MR. McGUIRE:

10:48:13 26 Q Do you think that if there was some type of
10:48:22 25 approval mechanism, that they would tell you about it?

10:48:24 26 MR. STONE: Objection; calls for speculation,

10:48:26 27 lacks foundation, vague and ambiguous, argumentative.
10:48:33 28 THE WITNESS: I'm not sure how there could be
Vail, Christians & Associates (619)544-8344 249
10:48:35 1 an approval mechanism involving lawyers or research
10:48:40 2 proposal or research project we were -- we were
10:48:46 3 carrying -- we were carrying forward. I don't know how
10:48:49 4 that would happen.
10:48:49 5 BY MR. McGUIRE:
10:48:49 6 Q Were you involved in any meetings where
10:49:02 7 discontinuation of ongoing projects were discussed and
10:49:07 8 agreed upon?
10:49:07 9 MR. STONE: Objection; overbroad.
10:49:15 10 THE WITNESS: Probably so.
10:49:17 11 BY MR. McGUIRE:
10:49:17 12 Q Did any of those discontinued projects
10:49:23 13 involve environmental tobacco smoke in any way?
10:49:27 14 A That's what I'm -- that's what I'm reflecting
10:49:30 15 on. I think the -- there were -- I think there probably
10:49:34 16 were some related to ETS and probably some related in some
10:49:38 17 nonETS areas as well.
10:49:39 18 Q With respect to the ETS programs, which ones
10:49:44 19 do you recollect, as you sit here now, were discontinued?
10:49:49 20 A I'm not limiting my thinking to solely Philip
10:49:53 21 Morris, but I'm thinking of something that occurred at the
10:50:00 22 Center for Indoor Area Research where there was a project
10:50:07 23 the center had agreed to fund, and we -- we -- maybe
10:50:16 24 discontinued is not absolutely -- absolutely
10:50:20 25 accurate. But maybe it is.
10:50:24 26 So there is some vagueness in my mind whether
10:50:29 27 discontinue is correct, but in any event, we stopped
10:50:32 28 funding this research.
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10:50:34 1 Q Did the -- does the Center for Indoor Air
10:50:40 2 Research issue grants on only a 12-month basis?
10:50:43 3 A Actually, it's really a contract, and I think
10:50:50 4 they're done on a yearly basis with a contingency going
10:50:55 5 out further -- further than that. Sometimes they go out
10:50:59 6 for three or four years, but it's -- it's as with the
10:51:03 7 National Institutes of Health, they're, on a yearly basis,
10:51:07 8 contingent upon whatever milestones the contract had in
10:51:14 9 place. Whether it was doing a certain amount of work,
10:51:16 10 providing reports, or some -- some parameter such as that.
10:51:24 11 Q We discussed this, I believe, yesterday. I
10:51:32 12 just don't recollect your answer.
10:51:34 13 Is the CIAR still operational?
10:51:37 14 A We did discuss it, and my answer was no
10:51:41 15 longer. And you asked me when, and I said sometime last
10:51:45 16 year.
10:51:45 17 Q I think you said after the MSA?
10:51:48 18 A Right.
10:51:49 19 Q Is there some organization that has taken the
10:52:02 20 place of CIAR but perhaps without any of the -- well, let
10:52:09 21 me just ask you that.
10:52:11 22 Is there some organization that serves the
10:52:13 23 same role that CIAR did when it was in existence,
10:52:16 24 presently?
10:52:17 25 MR. STONE: Objection; asked and answered
10:52:18 26 yesterday.
10:52:19 27 MR. MILES: Also vague.
10:52:22 28 THE WITNESS: I believe you asked me if not
Vail, Christians & Associates (619)544-8344 251
10:52:24 1 that identical question, pretty much the same question.
10:52:27 2 And I believe I gave you an answer then to that, and that

10:52:35 3 answer is that Philip Morris, on its own, has
10:52:38 4 incorporated, as part of its external research program,
10:52:43 5 the responsibility for continuing to carry out ETS-related
10:52:50 6 research on a worldwide basis for it to support --
10:52:54 7 sorry -- to support external research on ETS on a
10:52:57 8 worldwide basis.
10:52:58 9

BY MR. McGuIRE:

10:52:58 10 Q Is Philip Morris the only tobacco
10:53:03 11 manufacturer that is doing that?
10:53:06 12 A I don't know. I'm sorry.
10:53:10 13 Our program is strictly Philip Morris. If
10:53:15 14 your question is, is some other tobacco company a party to
10:53:19 15 it, the answer is no. If you're asking me extant that, is
10:53:25 16 R.J. Reynolds, B&W, or somebody, I don't know.

10:53:32 17 Q You mentioned something yesterday about a
10:53:46 18 website.

10:53:47 19 What, if anything, do you have or have you
10:53:49 20 had to do with the information appearing on Philip Morris'
10:53:52 21 website as it relates to environmental tobacco smoke?

10:53:56 22 A At various times, I have been a party to and
10:54:04 23 asked for input as to those parts of the Philip Morris
10:54:13 24 website on ETS that touch upon health -- health-related
10:54:19 25 issues.

10:54:19 26 Q Can you be any more specific than that? In
10:54:29 27 other words, can you give me a for example, I did this. I
10:54:32 28 did that.

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A Sure.

10:54:33 1 This week, I was party to a discussion with
10:54:37 2 Dr. Solana on two website issues, one that's already
10:54:45 3 been -- was implemented yesterday or the afternoon of the
10:54:54 4 day before. And that was putting the clickon access to
10:54:58 5 the NTP 9th Report on Carcinogens. So it was pleasing to
10:55:02 6 see the repeatity with which that happened on the website.
10:55:11 7

10:55:16 8 The second part is something that hasn't --
10:55:21 9 hasn't happened yet, because, as I said earlier, one of
10:55:23 10 the roles of the Philip Morris scientists, of which
10:55:26 11 Dr. Solana is now thankfully responsible for, is to make
10:55:31 12 recommendations to the company with regard to ETS science
10:55:34 13 and positions. And the website, you know, offers Philip
10:55:37 14 Morris a platform, an opportunity, if you will, to be able
10:55:41 15 to express to people what our thinking on some topics are.
10:55:48 16

10:55:54 17 And so there continues to be -- it's a
10:56:00 18 dynamic kind of process where as new information comes in,
10:56:04 19 new insights come in, the website will -- will be
10:56:11 20 modified. And that happened this week.
10:56:13 21

10:56:17 22 I think the week before, there was another --
10:56:22 23 another discussion with Philip Morris scientists headed by
10:56:26 24 Dr. Solana regarding ETS and the website.
10:56:28 25

10:56:34 26 There were others, but those are the ones
10:56:38 27 that are freshest in my memory.
10:56:42 28

Q Who -- who is responsible for the ETS -- who
is responsible for the website information?
A I don't know the answer to that question. I
mean --

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10:56:44 1 Q When was the NTP 9th Report on Carcinogens
10:56:50 2 issued?

10:56:51 3 A Recently.

10:56:52 4 Q Does Philip Morris have a historical tape
10:56:59 5 which -- if you know, which archives the position that
10:57:08 6 they have taken on various issues, including ETS, since
10:57:13 7 the time the website was begun?

10:57:15 8 A I don't know the answer to that question.
10:57:17 9 Q You said, "So it was pleasing to see the
10:57:23 10 repeatity with which that happened on the website."
10:57:28 11 Explain what you mean by that.
10:57:29 12 A Dr. Solana spoke to Dr. Nelson and said this
10:57:36 13 report is out. We need to get it on the website. And he
10:57:42 14 did that within the last week, and wha-la.
10:57:51 15 Q Does Philip Morris provide links to other
10:58:04 16 organizations who have positions on ETS that are contrary
10:58:10 17 to Philip Morris' position?
10:58:12 18 A I believe so, yes.
10:58:13 19 Q Yes?
10:58:14 20 A Yes.
10:58:14 21 Q Are these -- other than governmental
10:58:19 22 agencies, are private foundational type institutions
10:58:23 23 included, such as the Cancer Society, Lung Association,
10:58:27 24 people like that?
10:58:28 25 A I'm -- I'm not sure, but I know it has links
10:58:33 26 to governmental. And it may even have some to some
10:58:38 27 nongovernmental. And, by that, I mean -- I'd have to go
10:58:43 28 back and refer to it, whether it's a WHO or a subsidiary
Vail, Christians & Associates (619)544-8344 254
10:58:48 1 of WHO site, or maybe even a National Academy of Sciences
10:58:56 2 site. But I'd have to go back. I've never looked at it
10:59:03 3 from that perspective, Mr. McGuire.
10:59:04 4 Q On how many occasions have you reviewed the
10:59:08 5 website information with respect to ETS for purposes of
10:59:13 6 commenting or providing input to the company before you
10:59:18 7 left employment with them?
10:59:21 8 A Several times. Numerous times.
10:59:26 9 Q And have you done this after you left -- when
10:59:29 10 you went to your consultancy position after February
10:59:33 11 of 1999, did you continue to -- or do you continue to
10:59:37 12 provide that information or input?
10:59:38 13 A Yes. As I said in one of our recent
10:59:44 14 question-and-answer exchanges, within the last ten days,
10:59:47 15 I've had two conversations with Dr. Solana and his
10:59:50 16 colleagues regarding the ETS website.
10:59:52 17 Q Exhibit 4018, for identification, is a
11:00:09 18 consultation report distributed by World Health
11:00:14 19 Organization.
11:00:15 20 Did you have an opportunity to review that
11:00:18 21 yesterday or last evening?
11:00:20 22 A Last evening.
11:00:22 23 What shall I do with this?
11:00:24 24 Q You can just push it over there.
11:00:25 25 A Thank you.
11:00:27 26 Yes. Yes, I had an opportunity to look at
11:00:29 27 this last evening.
11:00:31 28 MR. STONE: I'm going to object to Exhibit
Vail, Christians & Associates (619)544-8344 255
11:00:32 1 4018 on the grounds that it's not authentic and it's
11:00:36 2 incomplete.
11:00:46 3 MR. RICHARDSON: Join in the objection.
11:00:48 4 MR. MILES: Join.
11:00:50 5 MR. LENDRUM: I also join.
11:00:51 6 BY MR. McGuIRE:
11:00:51 7 Q Have you ever seen this document before?
11:00:53 8 A No.
11:00:54 9 Q Are you going to recommend to Dr. Solana that
11:01:03 10 he put this document and/or the full report up on the
11:01:08 11 website?
11:01:09 12 MR. STONE: Objection; calls for speculation,

11:01:11 13 argumentative, lacks foundation.
11:01:18 14
11:01:21 15
11:01:26 16
11:01:31 17
11:01:34 18
11:01:38 19
11:01:42 20
11:01:48 21
11:01:52 22
11:01:58 23
11:02:04 24
11:02:07 25
11:02:07 26
11:02:14 27
11:02:18 28

Q Did Philip Morris provide any input to the World Health Organization regarding this consultation?
A I -- I am not aware of it, nor can I tell Vail, Christians & Associates (619)544-8344 256 from reading this document, since it's incomplete, in the scientific presentations, that these conclusions relied upon were not included. I haven't -- I haven't seen this or them before.

Q What positions in the part of the document that you have seen do you agree with?
A Okay. Let me just state for clarity, this is not a WHO position document. This is a document that reflects the opinions of the people who were involved in this. They're the ones that are held responsible for it, and it says so on page 2 on the bottom.

So I'm not sure as to the legitimacy of having this as a website clickon with a WHO header, without having some caveats. But that's neither here -- that's for the lawyers to worry about. I mean, I will convey this point to Dr. Solana.

Now, with regard to your question --
Q Before you go to my question, this is copyrighted by the World Health Organization, correct?
MR. STONE: Where is that?
BY MR. McGUIRE:
Q Right above where you referred me to where it says it's not a formal presentation, but right above it, that's a copyright bug with World Health Organization 1999, correct?
A That doesn't mean anything to me. But it does say at the bottom, "The views expressed in documents by named authors are solely the responsibility of those Vail, Christians & Associates (619)544-8344 257 authors." That, in my world, is a disclaimer. So. But that's for people with other interests to include, to worry about, not -- not for me.

So, for example, in this document, it -- though the focus based on the title you would believe is environmental tobacco smoke and child health, there is a significant -- there are significant inputs with regard to maternal smoking during pregnancy and a number of outcomes, some of which are adverse and some of which represent differences which may or may not be adverse.

I would just state that their position on that women who are pregnant shouldn't smoke is a position that Mr. Bible has stated publicly. So I would say Mr. Bible is the chairman of the corporation has stated it, and I can tell you that the scientists within Philip Morris who are knowledgeable in this area, which is at least superficially not related to ETS, believe that the

11:05:32 18 scientific data supports that view.
11:05:34 19 So that's something that the scientists and
11:05:37 20 Mr. Bible and, by extension, the company agrees with.
11:05:41 21 That's one.
11:05:44 22 The second -- and some of this is directly
11:05:48 23 evident in our website, directly relating to ETS, regards
11:05:52 24 smoking around children. And I think also -- and I don't
11:05:57 25 have it in front of me, Mr. McGuire -- also talks about --
11:06:03 26 may talk about asthma and how one should avoid smoking
11:06:06 27 around those kinds of individuals.
11:06:08 28 So, again, both the scientists within the
11:06:13 1 Vail, Christians & Associates (619)544-8344 258
11:06:16 2 company who are knowledgeable in this area as well as the
11:06:20 3 company, as expressed in its website, would agree -- would
11:06:21 4 agree with this.
11:06:28 5 For example, in terms of a disease outcome
11:06:32 6 called SIDS, Sudden Infant Death Syndrome, this document
11:06:39 7 basically lays that on the threshold of maternal smoking
11:06:44 8 and says with regard to ETS, more research needs to be
11:06:52 9 done. It does the same thing with neuro behavioral
11:06:56 10 effects. And I would say though that's pretty consistent
11:06:59 11 with our view, it would appear to be somewhat at odds with
11:07:03 12 some of the positions taken in your California --
11:07:08 13 California document, just as an -- just as an aside.
11:07:11 14 But within the text here, from what I was
11:07:15 15 able to glean, without seeing the scientific background
11:07:18 16 and only spending part of the evening reviewing it, those
11:07:22 17 are the things that rise -- rise to the surface for me.
11:07:29 18 So there were clearly things that resonated
11:07:32 19 with me that I believe the company agrees with, both in
11:07:35 20 terms of recommendations and in terms of analysis of data.
11:07:38 21 I would have to spend more than a casual
11:07:42 22 evening reviewing this and looking at the entire body of
11:07:46 23 information to give you a more thorough, complete, and
11:07:47 24 comprehensive answer.
11:07:48 25 Q Thank you.
11:07:49 26 A You're welcome.
11:07:52 27 Q I'd like to highlight some of the things and
11:07:59 28 have you tell me whether the company agrees that ETS is a
real and substantial threat to child health, causing death
Vail, Christians & Associates (619)544-8344 259
11:08:03 1 and suffering throughout the world.
11:08:04 2 MR. STONE: Same objections to the
11:08:06 3 documents. Object to the form of the question. Compound,
11:08:08 4 argumentative, vague and ambiguous.
11:08:12 5 THE WITNESS: Again, it's impossible for me
11:08:14 6 to intelligently respond to this, only having in front of
11:08:19 7 me a partial document, without the information that they
11:08:23 8 refer to in here that was -- that was presented and is
11:08:28 9 part of this publication but was not -- was not given to
11:08:32 10 me.
11:08:32 11 Not that I could have done it any justice in
11:08:36 12 reviewing that in an evening, to come back and be able to
11:08:41 13 say yes -- yes or no, Mr. McGuire.
11:08:43 14 BY MR. McGuIRE:
11:08:43 15 Q Do you have an answer to the question?
11:08:47 16 MR. STONE: Objection; asked and answered,
11:08:49 17 argumentative.
11:08:51 18 THE WITNESS: I can't answer your question
11:08:55 19 without understanding their basis for this. And their
11:09:01 20 basis for this is not provided in the information
11:09:03 21 contained within this document.
11:09:04 22 BY MR. McGuIRE:

11:09:04 23 Q Would it be accurate for me to conclude that
11:09:08 24 Philip Morris, through its PMK, doesn't know one way or
11:09:12 25 the other, as you sit here today, whether that's a true
11:09:15 26 statement or not?
11:09:16 27 MR. STONE: Objection; argumentative,
11:09:19 28 incomplete, overbroad, compound, lacks foundation, calls
Vail, Christians & Associates (619)544-8344 260
11:09:21 1 for speculation. And I reiterate my objections to Exhibit
11:09:25 2 4018.
11:09:29 3 THE WITNESS: As I sit here today, in the
11:09:30 4 absence of having the complete document and having the
11:09:34 5 complete document analyzed, it's not possible for me to
11:09:38 6 give a responsible answer to that question.
11:09:41 7 BY MR. McGUIRE:
11:09:41 8 Q How much time would it take to -- oh, you
11:09:46 9 mean the complete document instead of the executive
11:09:48 10 summary?
11:09:49 11 A Yes.
11:09:49 12 Q Okay. Is there some possibility that Philip
11:09:54 13 Morris might agree with that statement if it had the full
11:09:57 14 document to review?
11:09:58 15 MR. STONE: Objection; calls for speculation,
11:10:00 16 lacks foundation.
11:10:03 17 THE WITNESS: You know, it's a hypothetical,
11:10:06 18 but I have already said in terms of what I was able to
11:10:09 19 peruse through here in the evening, there are pieces of
11:10:13 20 this that we already agree with and have taken public
11:10:17 21 positions on. And that is as much information as I had.
11:10:26 22 Might there be some compelling information
11:10:29 23 out there that would get Philip Morris to change its
11:10:33 24 mind? If there's compelling information out there, I
11:10:36 25 believe that Philip Morris would change its mind if such
11:10:40 26 information existed.
11:10:41 27 BY MR. McGUIRE:
11:10:41 28 Q So as of now, Philip Morris would not agree
Vail, Christians & Associates (619)544-8344 261
11:10:46 1 that ETS is a real and substantial threat to child health,
11:10:50 2 causing death and suffering throughout the world?
11:10:53 3 MR. STONE: Objection; asked and answered,
11:10:54 4 argumentative, vague and ambiguous, compound, lacks
11:10:56 5 foundation, calls for speculation, and this witness can't
11:11:00 6 testify as to what Philip Morris would or would not do.
11:11:03 7 It's outside the scope of anything that he has the ability
11:11:05 8 to respond to.
11:11:06 9 BY MR. McGUIRE:
11:11:06 10 Q Is that correct?
11:11:06 11 A Could you repeat your question, please.
11:11:11 12 Q Yeah.
11:11:13 13 Is it correct that, as of now, based on what
11:11:16 14 you do know as of now about Philip Morris' position or
11:11:20 15 what they would agree to or not, that they would not agree
11:11:24 16 that environmental tobacco smoke is a real and substantial
11:11:29 17 threat to child health, causing death and suffering
11:11:32 18 throughout the world?
11:11:33 19 MR. STONE: Same objections.
11:11:34 20 THE WITNESS: I don't know what Philip Morris
11:11:37 21 would say to this statement in this document, as it
11:11:43 22 relates to your question.
11:11:44 23 BY MR. McGUIRE:
11:11:44 24 Q Do -- does Philip Morris dispute that recent
11:11:55 25 evidence demonstrates that environmental tobacco smoke
11:11:58 26 exposure increases risks of lung cancer and ischemic heart
11:12:02 27 disease among nonsmoking adults?

11:12:04 28

MR. STONE: Objection; compound, vague and

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11:12:06 1

ambiguous, lacks foundation, calls for speculation,

11:12:09 2

assumes facts not in evidence, improper use of the

11:12:12 3

document to which I've already asserted objections,

11:12:15 4

including that it's not authentic and is incomplete.

11:12:21 5

THE WITNESS: We're referring to statements
made in this document?

11:12:23 6

BY MR. McGUIRE:

11:12:24 7

Q Yes, sir.

11:12:25 8

A Again, there are statements in here, but the
backup information that they base this on at this meeting
in 1999 was not made available. So I can't -- I can't
answer that for this particular document and the basis for
their -- for their conclusions.

11:12:47 14

Q Did Philip Morris directly or indirectly
provide input to this group?

11:12:52 15

MR. STONE: Objection; asked and answered
about five minutes ago.

11:12:57 16

THE WITNESS: Yeah. You asked me that
question before, and my answer was not that I'm aware of,
I think.

11:12:59 17

BY MR. McGUIRE:

11:13:00 18

Q I added indirectly.

11:13:01 19

A Not that I'm aware of.

11:13:04 20

Q Do you -- have you personally -- do you know
who the people are that authored -- not authored, but sat
on this panel and apparently agreed with the conclusions
reached?

11:13:04 21

MR. STONE: I'm going to object that there's
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11:13:04 22

no evidence that anybody agreed with the conclusions or
disagreed, and there's no evidence in the document as to
who sat on the panel. If you want to ask him about names
of people that are listed, I'll let you ask him about
names. But the question assumes facts not in evidence,
it's argumentative, it's compound.

11:13:23 28

BY MR. McGUIRE:

11:13:24 1

Q Are there participants in this consultation
whose opinions Philip Morris respects as scientists?

11:13:27 2

MR. McGUIRE: Objection; overbroad, vague
and ambiguous, lacks foundation.

11:13:29 3

THE WITNESS: Opinions on what?

11:13:31 4

BY MR. McGUIRE:

11:13:35 5

Q On environmental tobacco smoke and the effect
of environmental tobacco smoke on the health of children
throughout the world.

11:13:37 6

MR. STONE: How is he supposed to know what
those opinions are? I mean, you have a list of 40 people
or something. He's supposed to know all their opinions
and whether they agree or disagree. It's compound.

11:13:39 7

MR. McGUIRE: I think for purposes of my
question, you can assume that they all support this
executive summary.

11:13:52 12

MR. STONE: Really?

11:13:53 13

MR. McGUIRE: Yes.

11:13:53 14

MR. STONE: And if that turns out not to be
true, can we strike this line of questioning?

11:13:57 15

MR. McGUIRE: Sure.

11:14:00 16

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11:14:01 17

MR. STONE: So stipulated.

11:14:03 18

THE WITNESS: And this relates to people that

11:14:06 19

I know?

11:14:09 20

11:14:12 21

11:14:13 22

11:14:16 23

11:14:16 24

11:14:18 25

11:14:18 26

11:14:20 27

11:14:22 28

11:14:23 1

11:14:26 2

11:14:28 3

11:14:29 4 BY MR. McGUIRE:
11:14:29 5 Q Or you're aware of, their reputation.
11:14:31 6 MR. STONE: Mr. McGuire doesn't really care
11:14:33 7 whether you know them or are aware of them or anything.
11:14:37 8 He's just asking an improper question for his own purposes.
11:14:39 9 You can try to answer as best you can, if you
11:14:42 10 have it in mind.
11:14:43 11 THE WITNESS: I don't understand the nature
11:14:44 12 of the question.
11:14:45 13 BY MR. McGUIRE:
11:14:45 14 Q Well, let's see. Jonathon Samet, you respect
11:14:50 15 him, right?
11:14:52 16 MR. MILES: Vague.
11:14:52 17 MR. STONE: Objection; improperly calls for
11:14:54 18 character testimony.
11:14:55 19 THE WITNESS: I respect Jonathon Samet as a
11:15:01 20 scientist.
11:15:01 21 BY MR. McGUIRE:
11:15:01 22 Q Okay. He sat on this panel or was one of the
11:15:04 23 consultants, correct?
11:15:05 24 A I think so.
11:15:06 25 Q Yes.
11:15:07 26 And I think you said yesterday that there was
11:15:09 27 a noted epidemiologist in Great Britain named Lee.
11:15:14 28 Do you remember that?
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11:15:14 1 A Yes.
11:15:14 2 Q He sat on this panel, didn't he?
11:15:17 3 A Did he?
11:15:17 4 Q Yes.
11:15:18 5 MR. STONE: Objection.
11:15:19 6 How do you know that?
11:15:20 7 THE WITNESS: Where --
11:15:21 8 MR. STONE: How is the witness supposed to
11:15:22 9 know that, Mr. McGuire?
11:15:23 10 THE WITNESS: Where is Lee in here?
11:15:26 11 BY MR. McGUIRE:
11:15:26 12 Q I believe his name is in this list.
11:15:28 13 MR. STONE: It is. It's on page 35. His
11:15:31 14 name is there. What does that mean, that there's a Tony
11:15:34 15 Lee listed.
11:15:34 16 THE WITNESS: No, that's a different Lee.
11:15:36 17 MR. STONE: Well, Mr. McGuire doesn't think
11:15:38 18 so.
11:15:38 19 THE WITNESS: Well, Peter Lee is the person
11:15:40 20 I'm talking about. And this Tony Lee is, I don't believe,
11:15:46 21 an epidemiologist, and he's a representative of an
11:15:50 22 anti-tobacco advocacy group.
11:15:52 23 BY MR. McGUIRE:
11:15:52 24 Q And --
11:15:53 25 A So do I know what his opinions are and do I
11:15:57 26 respect them? I don't have a clue. But I know he's not
11:16:01 27 the Peter Lee who is the noted epidemiologist in the UK.
11:16:06 28 Q So that's not the same Lee that you were
Vail, Christians & Associates (619)544-8344 266
11:16:09 1 referring to yesterday, then?
11:16:10 2 A No.
11:16:17 3 Q Where -- what about Dr. Eskenazi, are you
11:16:21 4 familiar with her?
11:16:23 5 A She's from California.
11:16:24 6 Q Yeah, I know.
11:16:25 7 A Oh. Okay. I'm familiar with some of her
11:16:34 8 work. Does she do neuro behavioral? I'm trying to

11:16:41 9 remember if that's what she does.
11:16:42 10 Q Do you have an opinion regarding her
11:16:46 11 credibility as an epidemiologist?
11:16:49 12 A No.
11:16:49 13 MR. STONE: Objection; lacks foundation,
11:16:50 14 calls for speculation.
11:16:52 15 MR. MILES: It's also vague.
11:16:53 16 THE WITNESS: No.
11:16:54 17 BY MR. McGUIRE:
11:16:54 18 Q Dr. Paolo Boffetta.
11:16:57 19 A Yes, I know --
11:16:58 20 MR. STONE: There's no question.
11:16:59 21 BY MR. McGUIRE:
11:16:59 22 Q You know him, right?
11:17:01 23 A Yes.
11:17:01 24 Q And, as a matter of fact, you've -- Philip
11:17:04 25 Morris has cited some of his work in support of some of
11:17:08 26 their positions; is that correct?
11:17:09 27 A Yes.
11:17:10 28 Q Has Dr. Boffetta changed any of the opinions
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that he reached, that you rely on?
11:17:14 1 MR. STONE: Objection; lacks foundation,
11:17:17 2 calls for speculation.
11:17:18 3 THE WITNESS: I don't know how to answer it.
11:17:20 4 I mean, I'm not in communication with Dr. Boffetta to be
11:17:21 5 able to answer that question.
11:17:27 6 BY MR. McGUIRE:
11:17:28 7 Q Have you spoken or has Philip Morris
11:17:30 9 communicated with him regarding this executive summary,
11:17:33 10 this exhibit, or the issues in it?
11:17:35 11 A Well, since I've not seen -- seen this before
11:17:37 12 or heard about it before, I have no way of knowing. And,
11:17:43 13 therefore, I can't answer your question.
11:17:46 14 Q Are you aware of Dr. Samet's synthesis, the
11:18:08 15 health effects of tobacco smoke exposure on children?
11:18:12 16 MR. STONE: Objection; vague and ambiguous,
11:18:14 17 lacks foundation.
11:18:16 18 THE WITNESS: I don't know.
11:18:16 19 MR. STONE: If that's a written document, I
11:18:18 20 think the document would speak for itself.
11:18:20 21 THE WITNESS: I'm not sure what you're
11:18:21 22 talking about.
11:18:22 23 BY MR. McGUIRE:
11:18:22 24 Q Are you aware of a document entitled
11:18:27 25 "Association of Inutero or Post Natal Environmental
11:18:32 26 Tobacco Smoke Exposure and Neuro Developmental and
11:18:35 27 Behavioral Problems in Children"?

11:18:37 28 A I know of work in that area. Whether it has
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that specific title or not, I'm not sure.

11:18:41 1 Q In this executive summary, were there any
11:18:43 2 statements made when you reviewed it, to the extent that
11:19:01 3 you could, that you can tell me now, as you sit here
11:19:05 4 today, that Philip Morris definitely does not agree with
11:19:10 5 the position stated?

11:19:14 6 11:19:16 7 MR. STONE: I'm going to object on the
11:19:17 8 grounds that there's no evidence that Philip Morris has
11:19:21 9 reviewed the document and has taken a position on
11:19:23 10 statements in this document one way or the other. This
11:19:25 11 witness lacks foundation to testify with respect to such
11:19:28 12 questions and has not been designated to do so. The
11:19:31 13 question is vague and ambiguous, compound, and overbroad.

11:19:35 14 The document itself is inadmissible as both not
11:19:39 15 authenticated and incomplete.
11:19:42 16 You can try to answer, if you can.
11:19:44 17 THE WITNESS: Given the amount of time and
11:19:46 18 the incompleteness of the document, what I have conveyed
11:19:49 19 to you earlier in my answer with respect to what we have
11:19:53 20 already agreed to in here. Beyond that, it would take --
11:19:59 21 in terms of disagreement, it would take a more thorough
11:20:04 22 examination of the entire -- entire document. So I'm not
11:20:09 23 in a position to answer that question, given the limited
11:20:12 24 information that I've had to review.
11:20:13 25 BY MR. McGUIRE:
11:20:16 26 Q All right. I won't ask you any further
11:20:22 27 questions on this document, based on that statement.
11:20:25 28 There is one clause that you may or may not
11:20:33 1 Vail, Christians & Associates (619)544-8344 269
11:20:37 2 have information on, where an estimate is made that a
11:20:39 3 billion people smoke worldwide.
11:20:41 4 Does that sound accurate to you?
11:20:42 5 MR. STONE: Objection; lacks foundation,
11:20:44 6 calls for speculation.
11:20:44 7 BY MR. McGUIRE:
11:20:47 8 Q Actually, they have a thousand million, but I
11:20:48 9 think that's the same as a billion.
11:20:50 10 A That's correct.
11:20:51 11 MR. STONE: And outside the area in which
11:20:53 12 this witness has been designated to testify.
11:20:58 13 If you have a view, you can state your view.
11:21:00 14 THE WITNESS: I used to have an estimate of
11:21:05 15 that number, but I don't recall with any degree of
11:21:06 16 precision what that is.
11:21:06 17 BY MR. McGUIRE:
11:21:10 18 Q They also estimate that around 700 million
11:21:15 19 children are exposed to environmental tobacco smoke.
11:21:18 20 Does that comport with your understanding as
11:21:21 21 to worldwide exposure, if you have one?
11:21:22 22 MR. STONE: Same objections.
11:21:24 23 THE WITNESS: Yeah, the basis for that
11:21:28 24 decision is contained in a document that's referenced
11:21:31 25 that's not in here. So I have no way of evaluating that
11:21:32 26 information.
11:21:32 27 BY MR. McGUIRE:
11:21:39 28 Q Do -- do you have an estimate as to how many
11:21:42 1 children are exposed to environmental tobacco smoke in
11:21:44 2 Vail, Christians & Associates (619)544-8344 270
11:21:46 3 California?
11:21:48 4 MR. STONE: Same objections, lacks
11:21:48 5 foundation, calls for speculation.
11:21:48 6 THE WITNESS: No, I don't.
11:21:48 7 BY MR. McGUIRE:
11:21:51 8 Q Is there someone at Philip Morris that would
11:21:56 9 have an estimate of that statistic?
11:21:59 9 A For the state of California, it's -- it's
11:22:03 10 possible. But that would be somebody that either works
11:22:05 11 for Dr. Solana or is within his reach.
11:22:12 12 Q And do you know what the source of that
11:22:14 13 person's information would be?
11:22:15 14 MR. STONE: Objection; calls for
11:22:16 15 speculation.
11:22:16 16 THE WITNESS: No, I don't.
11:22:16 17 BY MR. McGUIRE:
11:22:37 18 Q And let's now talk about Exhibit 4019, for
identification, which is a portion of the web's version of

11:22:46 19 the 9th Report on Carcinogens 2000, U.S. Department of
11:22:51 20 Health and Human Services, Public Health Service and the
11:22:56 21 National Toxicology Program.
11:22:57 22 We started into this area yesterday, and you
11:23:02 23 indicated that you -- I got a partial answer or something
11:23:07 24 about you were intimately familiar with this particular
11:23:11 25 report.
11:23:11 26 Am I accurately --
11:23:12 27 A Absolutely.
11:23:13 28 Q Okay. What was your involvement with this
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11:23:18 1 report?
11:23:20 2 A When the NTP publicly announced that it was
11:23:26 3 considering a variety of materials for candidate --
11:23:31 4 candidate materials for evaluation, they sent out a
11:23:35 5 notice. That notice found its way to me, either directly
11:23:42 6 from NTP or from one of my colleagues within Philip Morris.
11:23:46 7 And based -- based upon that, the scientists
11:23:51 8 got together. We had a series of discussions. And then I
11:23:57 9 spoke to an attorney within Philip Morris.
11:24:04 10 MR. STONE: Don't go into the substance of
11:24:06 11 the conversation.
11:24:08 12 THE WITNESS: Relating to the fact that there
11:24:09 13 was this notice. And they were asking for responses,
11:24:16 14 scientific responses to these materials, and just to make
11:24:22 15 them aware that we were looking at this and trying to
11:24:26 16 consider what kind of a scientific response would be
11:24:32 17 appropriate for us.
11:24:33 18 BY MR. McGUIRE:
11:24:33 19 Q Okay. Did you eventually -- did Philip
11:24:41 20 Morris eventually make a response or give a response?
11:24:44 21 A We gave several written responses and two
11:24:48 22 oral presentation responses.
11:24:51 23 Q Who did you give the oral presentation to?
11:24:53 24 A To the NTP. Once in Research Triangle Park
11:25:01 25 in North Carolina before the chairman and members of
11:25:05 26 committee, and once in -- and we talked about this
11:25:09 27 yesterday. Once in Rockville, Maryland before another
11:25:16 28 chairman and another part of that committee process.
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11:25:19 1 There were several committees that review this
11:25:23 2 information.
11:25:23 3 And both of those meetings were public, and
11:25:27 4 both of those meetings, the materials that were presented
11:25:32 5 were publicly -- publicly available. And at least -- and
11:25:40 6 maybe in both cases. But at least in the case of the
11:25:43 7 Rockville meeting, there was a transcript of the
11:25:46 8 presentation, much like Mrs. Smith is doing -- is doing
11:25:52 9 now. I'm not sure whether there was such a transcript in
11:25:57 10 the meeting held at Research Triangle Park. It was not
11:26:01 11 limited to ETS. It covered areas that people were
11:26:07 12 interested in, amongst the candidate materials that they
11:26:10 13 were reviewing.
11:26:10 14 Q On the second -- well, the substance -- the
11:26:24 15 substances that are profiled, obviously, include
11:26:28 16 environmental tobacco smoke but a number of other
11:26:34 17 substances, agents, or mixtures.
11:26:38 18 Which of those that are listed, to your
11:26:39 19 knowledge, are also included in environmental tobacco
11:26:45 20 smoke, if any?
11:26:49 21 MR. STONE: Objection; improperly calls for
11:26:50 22 opinion testimony, outside the area in which this witness
11:26:53 23 has been designated to testify, compound.

11:26:57 24 THE WITNESS: So you're looking at 'B' on
11:26:58 25 page 2 of 6?
11:27:00 26 BY MR. McGUIRE:
11:27:00 27 Q It starts on page 1 of 6.
11:27:02 28 A Is that where you want -- is that where you
Vail, Christians & Associates (619)544-8344 273
11:27:05 1 want me to start?
11:27:06 2 Q Yes. Aflatoxins.
11:27:08 3 For example, I think 1,3- Butadiene is one
11:27:13 4 substance of environmental tobacco smoke, isn't it?
11:27:17 5 A Okay. So you want me to start from here?
11:27:21 6 Q Yes.
11:27:22 7 A Okay. That's fine.
11:27:23 8 From looking at this list, page 1 of 6,
11:27:25 9 substances that have been reported in environmental
11:27:28 10 tobacco smoke would include 4-Aminobiphenyl, some
11:27:39 11 arsenical compounds, Benzene, 1,3-Butadiene, Cadmium.
11:27:52 12 There's Chromium, but it's unknown whether
11:27:56 13 it's Hexavalent or not.
11:27:58 14 Ethylene Oxide, 2-Naphthylamine, Radon,
11:28:15 15 Vinyl Chloride, Acetaldehyde, Acrylonitrile. There are
11:28:25 16 some quinones. I don't know whether 2-Aminoanthraquinone
11:28:30 17 is there. It could very well be. So the other
11:28:33 18 anthraquinones might be there.
11:28:37 19 There have been rare reports of Beryllium in
11:28:45 20 smoke, but that's only been in certain kinds of tobaccos.
11:28:49 21 And that's outside of the United States.
11:28:50 22 I believe p-Cresidine. I'm on page 3 of 6
11:29:09 23 now. Formaldehyde. There are Furans in smoke.
11:29:37 24 Hydrazines have been reported, but the analytical
11:29:43 25 methodology is basically invalid. So I don't know whether
11:29:48 26 it's there or not. Nor do I believe anybody else does.
11:29:52 27 Know it, in the sense of having valid
11:29:59 28 analytical data that would support it.
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11:30:02 1 Isoprene -- I'm on page 4 of 6 -- is found in
11:30:09 2 environmental tobacco smoke. There are Nickel compounds
11:30:14 3 that have been reported. And when I'm talking about
11:30:19 4 these -- these things, this data is primarily derived from
11:30:26 5 INBIFO, which, as I said earlier, has published the most
11:30:31 6 exhaustive chemical analysis of our room-aged sidestream,
11:30:37 7 which is an ETS surrogate. To my knowledge, nobody else
11:30:40 8 has reported many of the things that I'm talking about
11:30:42 9 that we have -- we have reported.
11:30:43 10 There are Nitroarenes. I'm not sure whether
11:30:53 11 2-Nitropropane is in there. There are pyrrolidines and
11:31:06 12 piperidines and N-Nitrosonornicotine. And I'm sorry. I
11:31:13 13 missed one. NNK, up on the top, the
11:31:18 14 4-(N-Nitrosomethylamino)-1-(3-pyridyl)-1-butanone.
11:31:18 15 Sarcosine. Polycyclic Aromatic
11:31:39 16 Hydrocarbons. I don't know if all of these have been
11:31:45 17 determined, but it wouldn't surprise me if one looked in
11:31:49 18 the right -- under the right situations, you might be able
11:31:54 19 to find -- find it.
11:31:56 20 Q When you say I don't know if any of these,
11:31:59 21 you mean of the 15 listed?
11:32:00 22 A We have identified some, but I'm not sure if
11:32:03 23 all of them have been --
11:32:05 24 Q Okay. Thank you.
11:32:07 25 A -- identified. Oh, you're quite welcome.
11:32:09 26 I may have missed one or more, but those are
11:32:28 27 the ones that I'm aware of. Those that I'm aware of are
11:32:38 28 primarily those that we reported in our publication.

11:32:41 1 Forgive me. Nicotine. I'm sorry. But
11:32:47 2 that's not on this list. Sorry. Yet. Okay. Okay.
11:32:53 3 That's it.

11:32:54 4 Q Has Philip Morris concluded that nicotine is
11:33:09 5 a carcinogen?

11:33:10 6 A No. Nor am I aware has anybody else.

11:33:15 7 Q Turning to the portion of this exhibit that
11:33:46 8 deals specifically with environmental tobacco smoke, which
11:33:50 9 is at the end of the summary.

11:33:57 10 MR. STONE: I object on the grounds that this
11:33:59 11 document is incomplete, not authentic. I'd like to just
11:34:04 12 have a running objection to questions about this document
11:34:07 13 on that ground, if I could.

11:34:09 14 MR. MC GUIRE: Yes.

11:34:12 15 MR. RICHARDSON: I join in that objection.

11:34:14 16 MR. MILES: Join.

11:34:16 17 Do we have the same stipulation that our
11:34:17 18 joinder is running as well?

11:34:19 19 MR. MC GUIRE: On this document, yes.

11:34:23 20 MR. LENDRUM: I join in that objection as
11:34:25 21 well.

11:34:25 22 THE WITNESS: So the header for this,

11:34:27 23 Mr. McGuire?

11:34:28 24 BY MR. MC GUIRE:

11:34:28 25 Q "Environmental Tobacco Smoke."

11:34:30 26 A Is the "First Listed in the Ninth Report"?

11:34:31 27 Q Yes.

11:34:36 28 A Yes, sir.

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11:34:41 2 Q There is a definition of ETS that says
11:34:46 3 "Additional information relevant to carcinogenesis or
possible mechanisms of carcinogenesis."

11:34:51 4 A Yes.

11:34:52 5 Q Would you concur with the accuracy and
11:34:54 6 completeness of that definition?

11:34:56 7 MR. STONE: I think the definition really is
11:34:58 8 on the next page under the heading "Properties," to the
11:35:01 9 extent it's, I think, more precise. You can refer him to
11:35:05 10 whichever one, but I think that one probably -- that also
11:35:07 11 has citations to the sources for what they have in mind.

11:35:10 12 BY MR. MC GUIRE:

11:35:10 13 Q Would you agree?

11:35:12 14 A With the definition?

11:35:14 15 Q That a better and more complete definition
11:35:17 16 would be under the definition that appears under
11:35:19 17 "Properties" rather than the ETS as a complex mixture of
11:35:24 18 gases, et cetera --

11:35:26 19 A Well --

11:35:27 20 Q -- or both of them together?

11:35:29 21 A Well, they satisfy different conditions. But
11:35:32 22 if you're asking me what ETS is, which one more accurately
11:35:37 23 captures -- captures that, I think that under the
11:35:42 24 "Properties," that sentence that's there is, I think,
11:35:45 25 pretty much what I said when you asked me that question
11:35:48 26 yesterday.

11:35:50 27 Q Is sidestream smoke more toxic or
11:35:54 28 carcinogenic than mainstream smoke?

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11:35:59 2 MR. STONE: Objection; compound, overbroad,
11:36:02 3 improperly calls for opinion testimony.

11:36:04 4 THE WITNESS: The studies that have been done
based on a per milligram basis of condensate, done in

11:36:11 5 mouse skin painting, where you apply the condensative
11:36:15 6 smoke repeatedly on the backs of mice, demonstrate that
11:36:19 7 fresh sidestream on that basis, under those conditions, is
11:36:23 8 more carcinogenic.
11:36:27 9 BY MR. McGUIRE:
11:36:27 10 Q Did -- was that determination made as a
11:36:31 11 result of research done by Philip Morris scientists?
11:36:34 12 A That research was determined before Philip
11:36:37 13 Morris did it, but INBIFO basically carried out an
11:36:43 14 experiment in its own laboratories and basically confirmed
11:36:47 15 what had already been -- what had already been published.
11:36:49 16 Q Who was it that first used mouse skin
11:36:53 17 paintings to arrive at the conclusion that sidestream
11:36:57 18 smoke was more carcinogenic than mainstream, if you know?
11:37:03 19 MR. MILES: Object to the characterization.
11:37:05 20 Misstates his testimony.
11:37:11 21 THE WITNESS: Well, to the extent we're
11:37:14 22 talking about mouse skin painting and fresh sidestream
11:37:18 23 smoke, a name that comes to my mind is Deitrich Hoffmann,
11:37:22 24 but I could be wrong.
11:37:24 25 VIDEOGRAPHER: Excuse me, Counsel. I'm going
11:37:26 26 to need to do a tape change in two minutes.
11:37:29 27 MR. McGUIRE: Well, we might as well just
11:37:38 28 wait for the tape change.
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11:37:40 1 VIDEOGRAPHER: This concludes Tape 1 of the
11:37:42 2 deposition. The time is 11:38.
11:37:44 3 (Recess.)
11:48:17 4 VIDEOGRAPHER: We are back on the record.
11:48:32 5 This begins Tape 2 of Volume II, deposition of Richard
11:48:36 6 Carchman, Ph.D. And the time is 11:49.
11:48:41 7 BY MR. McGUIRE:
11:48:41 8 Q Dr. Carchman, do -- does Philip Morris agree
11:48:47 9 that sidestream smoke contains at least 250 chemicals
11:48:53 10 known to be toxic or carcinogenic?
11:48:55 11 MR. STONE: Objection; assumes facts not in
11:48:57 12 evidence; namely, that there's a Philip Morris belief on
11:49:03 13 that or a position on that. Lacks foundation, calls for
11:49:07 14 speculation.
11:49:08 15 You can answer as best you know.
11:49:11 16 THE WITNESS: As I said earlier, the only
11:49:13 17 things that had been identified in -- in ETS are the ones
11:49:22 18 that we have -- we have published on, and the expectation
11:49:26 19 is that if it's in ETS, it's also in sidestream smoke.
11:49:33 20 And that number is something around 50 -- 50 materials.
11:49:38 21 As to whether they're toxic or not is a scientifically
11:49:44 22 inappropriate proposition in the absence of having a
11:49:50 23 context with regard to concentration and exposure.
11:49:53 24 BY MR. McGUIRE:
11:50:04 25 Q On the next page, does Philip Morris agree
11:50:22 26 with the statement that there are no known uses of
11:50:25 27 environmental tobacco smoke?
11:50:29 28 MR. STONE: Same objection to the use of the
Vail, Christians & Associates (619)544-8344 279
11:50:31 1 document.
11:50:34 2 Can you point to where that statement is?
11:50:36 3 MR. McGUIRE: It's on the next page.
11:50:37 4 MR. STONE: Can you just tell me how far
11:50:39 5 down.
11:50:39 6 MR. McGUIRE: It's under "Use." It's the
11:50:41 7 one-liner.
11:50:42 8 THE WITNESS: So it's on the same page as
11:50:44 9 "Properties."

11:50:44 10 MR. STONE: Oh. It's on the same page.
11:50:46 11 THE WITNESS: As "Properties." I'm sorry.
11:50:48 12 MR. STONE: Objection; vague and ambiguous,
11:50:54 13 lacks foundation.
11:50:54 14 THE WITNESS: I'm not aware of any -- of any
11:50:59 15 use as I might be thinking of it for environmental tobacco
11:51:02 16 smoke.
11:51:03 17 BY MR. McGUIRE:
11:51:03 18 Q Does -- when Philip Morris sells a pack of
11:51:06 19 cigarettes, do they intend for the purchaser to smoke
11:51:09 20 them?
11:51:10 21 MR. STONE: Objection; outside of scope on
11:51:13 22 which this witness has been designated to testify, lacks
11:51:16 23 foundation, calls for speculation, assumes facts not in
11:51:18 24 evidence; namely, that there is such a thing as a
11:51:23 25 corporation having an intent. It's vague and ambiguous.
11:51:27 26 You can answer as best you know.
11:51:30 27 THE WITNESS: I personally believe that's the
11:51:32 28 intent.
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11:51:33 1 BY MR. McGUIRE:
11:51:33 2 Q Okay. Was there a debate at one point in
11:51:38 3 time in Philip Morris as to whether they were in the
11:51:42 4 pleasure business or the tobacco business?
11:51:44 5 A There were discussions amongst some of the
11:51:50 6 scientists about whether one of the reasons that people
11:51:57 7 smoked cigarettes, pipes, cigars, cigarettes, drink port
11:52:03 8 or bourbon, or do other things, whether they were all --
11:52:11 9 that people did it because they were pleasurable.
11:52:14 10 And there were some -- some scientists in
11:52:18 11 Philip Morris that actually, for a period of time,
11:52:23 12 supported some efforts with a group that actually did
11:52:31 13 that. And I think at least the main principal in that
11:52:37 14 published -- published on that. But I would say those
11:52:44 15 scientists were in the minority, and eventually, Philip
11:52:50 16 Morris stopped contributing to those efforts.
11:52:55 17 Q Could you -- you used a lot of "its" and
11:53:03 18 "thats." When you say they -- for example, "I would say
11:53:06 19 those scientists were in the minority, and eventually,
11:53:09 20 Philip Morris stopped contributing to those efforts."
11:53:12 21 What efforts, if you would, please?
11:53:15 22 A Okay. First of all, in Neuchatel -- and this
11:53:19 23 is before my involvement with Neuchatel. So this is prior
11:53:24 24 to '93. There was a scientist in Neuchatel, Dr. Peter
11:53:34 25 Martin, who was interested and I believe had funded some
11:53:41 26 work carried out by a Dr. David Warburton in the UK. And
11:53:48 27 the organization -- the acronym is or was ARISE,
11:53:53 28 A-R-I-S-E. I can't tell you what all the little letters
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11:53:59 1 mean, other than the last two, the 'S' and 'E,' I believe,
11:54:05 2 are substance enjoyment.
11:54:08 3 And Dr. Martin had provided funds through --
11:54:15 4 he was a Philip Morris employee, so they were Philip
11:54:18 5 Morris funds for that. I would say once other scientists
11:54:21 6 in Philip Morris had a better understanding of what was
11:54:25 7 going on, we basically stopped funding those efforts. I
11:54:32 8 can't give you any more specificity with regard to dates.
11:54:38 9 If you want to know the names of the other scientists, I
11:54:41 10 can probably recall some of them. Myself being one.
11:54:44 11 Q Okay. No. What I'd like you to do, though,
11:54:48 12 is to give me a little bit more in terms of those
11:54:51 13 efforts.
As I am understanding what you're saying is

11:54:53 15 that Dr. Warburton was doing research into whether or not
11:55:01 16 cigarette smoking was providing some pleasurable aspect or
11:55:07 17 I'll call it psychopharmacological property or need.
11:55:12 18 Is that what you meant by that?
11:55:14 19 A I don't -- I don't -- I don't think so.
11:55:17 20 Q Explain to me, then, what your answer meant,
11:55:21 21 please.
11:55:21 22 A Okay. What Dr. Warburton was doing with this
11:55:25 23 ARISE program or ARISE project or society or whatever it
11:55:29 24 actually was or is, if it still exists, was to try to put
11:55:35 25 in context why people do certain things, why they eat
11:55:38 26 certain foods; why they smoke certain kinds of products,
11:55:42 27 not limited to tobacco; why they consume certain kinds of
11:55:46 28 beverages, whether it's coffee, tea, milk, alcohol. And
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11:55:54 1 there is what he would call a benefit, and that benefit is
11:55:59 2 pleasure. It makes them comport better with their
11:56:04 3 environments. It makes -- it makes them feel better in
11:56:09 4 body, some positive -- some positive attributes. I think
11:56:15 5 that's what -- what he meant by -- by that.
11:56:22 6 Q On the last page of Exhibit 4019, there are a
11:56:37 7 number of citations and references to relative risks
11:56:47 8 assessments in different areas.
11:56:50 9 Are any of those particular studies that are
11:56:54 10 mentioned there, studies that you are aware of and can
11:57:00 11 advise me whether Philip Morris agrees with the
11:57:03 12 conclusions of the listed studies?
11:57:06 13 MR. STONE: I think these are -- just so I'm
11:57:09 14 clear, I don't think these are relative risk references.
11:57:12 15 THE WITNESS: I can't -- I can't --
11:57:14 16 BY MR. McGUIRE:
11:57:14 17 Q I'm sorry. There's exposure -- there are
11:57:17 18 exposure levels. Let's work our way down.
11:57:19 19 A Uh-huh.
11:57:20 20 Q There's a study, Millar, 1991, which talks
11:57:27 21 about estimating measures of RSP and citing Repace and
11:57:36 22 Lowrey in 1980 and '82.
11:57:40 23 Without getting this compound, first of all,
11:57:42 24 the Millar article, are you familiar with that?
11:57:44 25 A Yes.
11:57:44 26 Q Is that an article that you concur -- or
11:57:46 27 Philip Morris concurs with the conclusion of?
11:57:49 28 MR. STONE: Objection; lacks foundation,
Vail, Christians & Associates (619)544-8344 283
11:57:50 1 calls for speculation.
11:57:51 2 THE WITNESS: There's -- they are not --
11:57:53 3 Millar is not using any original data. He's basically
11:57:56 4 citing some work that Mr. Repace and Dr. Lowrey published
11:58:06 5 20 years ago.
11:58:07 6 BY MR. McGUIRE:
11:58:07 7 Q Okay. And do you have a -- does Philip
11:58:11 8 Morris agree with whatever conclusions Millar reached?
11:58:14 9 MR. STONE: Objection; vague and ambiguous,
11:58:15 10 assumes facts not in evidence, lacks foundation, including
11:58:18 11 whether or not there's any Philip Morris position on these
11:58:20 12 conclusions, if there are any.
11:58:23 13 THE WITNESS: I don't know whether Philip
11:58:24 14 Morris agrees with the '91 -- or disagrees with the '91
11:58:29 15 study in which data from 20 years ago is represented as an
11:58:36 16 estimate of respirable particles. I don't believe that
11:58:44 17 Philip Morris had any information in 19- -- in 1980, other
11:58:47 18 than to say that RSP, respirable particles, is not a
11:58:55 19 specific marker for environmental tobacco smoke.

11:58:58 20 And so whatever this measurement is, 0.242
11:59:02 21 micrograms per cubic meter of RSP, you don't know from
11:59:10 22 these studies taken 20 years ago what proportion, if any,
11:59:14 23 of this ETS is contributing to. And I think it was true
11:59:20 24 then and it's true now. There are better ways of
11:59:22 25 estimating ETS than RSP.
11:59:26 26 This may have been appropriate at the time in
11:59:31 27 1980, but it's inappropriate to use a 1980 study using RSP
11:59:37 28 for a report published in the last two years.
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BY MR. McGUIRE:
Q Is that -- does your answer include any
criticism that Philip Morris has of the Repace and Lowrey
articles that are cited?
MR. STONE: Objection; lacks foundation as to
what it means when you use the phrase Philip Morris
criticism, assumes facts not in evidence, is vague and
ambiguous, is overbroad and compound.
THE WITNESS: I think my response is not
limited to, but at this point, without having those papers
in front of me, Philip Morris' criticism would be --
criticism of the Philip Morris scientists to this work
would be the same as the ones I've just stated, as to the
lack of specificity with regard to RSP, in the absence of
having other markers that would provide greater
specificity as to what that represents.
BY MR. McGUIRE:
Q What's the range or the estimated range as to
what proportion of RS -- of respirable suspended particles
are related to ETS?
MR. STONE: Objection; lacks foundation,
calls for speculation, incomplete hypothetical without all
the elements, improperly calls for opinion testimony.
THE WITNESS: Yeah. That has actually been
discussed and debated in the literature for the last --
the last 20 years, and there have been estimates, and then
there have been actual experiments.
All I can say at this -- at this point in
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time, it varies as a function of the environment and
what's going on in the environment.
If you're in a smoky bar and you're measuring
RSP, it is likely that the ETS component of that is going
to be significant, but that's something you have to
determine from environment to environment.
Though, some people have tried to normalize
that and be able to generalize, I don't believe the data
allows you to do that.
BY MR. McGUIRE:
Q Have you -- are you aware of any work that
has estimated that at about 78 percent?
A It's an interesting number you --
Q I just kind of pulled that out of the air.
A Well, you're very good. And, again, there
have been a wide variety of estimates from that number,
above that number, to below that number. But the estimate
is so dependent upon the context that rather than rely on
an estimate, one should rely on valid experimental data.
And valid experimental data that has been published in the
peer-reviewed literature basically shows a wide variety of
percentages of the ETS contribution, depending on the
conditions.
Q I've seen reference to measurements of

12:02:44 25 constituents in ETS that are divided into a gas phase and
12:02:51 26 into a particulate phase.
12:02:53 27 Is that something you're familiar with?
12:02:54 28 A Very much so, yes.
12:02:56 1 Vail, Christians & Associates (619)544-8344 286
12:03:01 2 Q Okay. Is -- has Philip Morris done any work
12:03:08 3 with respect to which is the more carcinogenic, the gas
phase or the particulate phase?
12:03:09 4 MR. STONE: Objection; vague and ambiguous
12:03:10 5 with respect to the phrase "more carcinogenic," lacks
12:03:14 6 foundation in this context.
12:03:16 7 THE WITNESS: The answer to your question
12:03:18 8 comes in several parts, part of which we've already
12:03:23 9 discussed, and that was the mouse skin painting with
12:03:25 10 sidestream paint in which condensate is used. So when I
12:03:32 11 talk about condensate, I'm talking about the particulate
12:03:36 12 phase. The mouse skin painting, therefore, would exclude
12:03:39 13 from examination the gas phase.
12:03:42 14 So the particle phase of tobacco smoke,
12:03:45 15 whether it's mainstream smoke or fresh sidestream smoke is
12:03:50 16 carcinogenic in mouse skin painting. And as we indicated
12:03:56 17 before, that's been published, and we have our own
12:03:59 18 internal data that supports those observations and in that
12:04:04 19 particular system.
12:04:06 20 With regard to the gas phase components, I'm
12:04:12 21 aware of only one laboratory that has any information that
12:04:19 22 allows you to guess as to the tumorigenicity, if you will,
12:04:26 23 of an ETS-like aerosol. And that's Dr. Witschi's --
12:04:34 24 Witschi's work, which seems to -- one has to juxtapose
12:04:41 25 that with the mouse skin painting work, because as part of
12:04:45 26 Dr. Witschi's studies, he found the activities solely in
12:04:49 27 the gas phase. The published mouse skin painting
12:04:53 28 basically says there's carcinogenic activity in the
12:04:56 1 Vail, Christians & Associates (619)544-8344 287
12:05:03 2 particulate phase. And so somehow, these what would
12:05:08 3 appear to be discrepancies, appear to be discrepancies but
12:05:13 4 they're different systems, needs to be -- needs to be
resolved.
12:05:14 5 BY MR. McGuIRE:
12:05:14 6 Q When does the gas phase end and the
12:05:16 7 particulate phase begin?
12:05:18 8 MR. STONE: Objection; vague and ambiguous,
12:05:20 9 improperly calls for opinion testimony.
12:05:23 10 THE WITNESS: Begins? I'm not sure I
12:05:24 11 understand by "begins."
12:05:26 12 BY MR. McGuIRE:
12:05:26 13 Q Well, does the gas phase of ETS begin with
12:05:29 14 the sidestream smoke and the exhaled mainstream smoke,
12:05:35 15 leaving both the cigarette, on the former, and the
12:05:39 16 smoker's lungs, on the latter?
12:05:41 17 A Let me --
12:05:42 18 MR. STONE: Objection; vague and ambiguous.
12:05:43 19 THE WITNESS: Let me try to answer.
12:05:44 20 Tobacco smoke aerosol, per se, is composed of
12:05:49 21 multiple phases. Two of them are the ones you've
12:05:52 22 described: particles and gas phase. Sidestream smoke has
12:05:58 23 a particle phase and a gas phase. And that's the major
12:06:03 24 contributor to environmental tobacco smoke.
12:06:07 25 And so when you're talking about tobacco
12:06:10 26 smoke as it's generated, these kinds of tobacco aerosols
12:06:19 27 are created. So as soon as you start to combust, burn
12:06:27 28 tobacco, you end up with at least those two components.
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12:06:30 1 BY MR. McGUIRE:
12:06:30 2 Q And so they're existing simultaneously; is
12:06:33 3 that correct?
12:06:33 4 A Yes.
12:06:33 5 Q Does -- do humans ingest the particulate
12:06:51 6 phase of sidestream smoke?
12:06:52 7 MR. STONE: Objection; vague and ambiguous,
12:06:54 8 incomplete hypothetical without all the elements,
12:06:56 9 improperly calls for opinion testimony.
12:07:01 10 THE WITNESS: I don't know if you mean ingest
12:07:02 11 or inhale.
12:07:03 12 BY MR. McGUIRE:
12:07:03 13 Q I meant ingest.
12:07:05 14 MR. STONE: Same objections.
12:07:06 15 THE WITNESS: Generally speaking, it's hard
12:07:09 16 to observe people licking themselves or other structures
12:07:15 17 in the environment. That would be one way of ingesting
12:07:21 18 it.
12:07:22 19 Another way of ingesting it would be to eat
12:07:25 20 or drink food that had been in an environment in which ETS
12:07:30 21 was in, and in which case, I believe you probably could,
12:07:42 22 if you looked, find evidence for such an event.
12:07:47 23 BY MR. McGUIRE:
12:07:49 24 Q Is there any reason that that would not
12:07:51 25 occur, that as the particulates settle, they would settle
12:07:54 26 on a cookie and a child comes in and takes the cookie and
12:07:58 27 eats the cookie?
12:07:59 28 MR. STONE: Same objections.
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12:08:00 1 BY MR. McGUIRE:
12:08:00 2 Q That doesn't seem too farfetched from the
12:08:03 3 real world, does it?
12:08:04 4 MR. STONE: Same objections. Also
12:08:06 5 argumentative.
12:08:06 6 THE WITNESS: I think that's a possibility.
12:08:08 7 BY MR. McGUIRE:
12:08:08 8 Q Your rat studies that are ongoing, do they
12:08:10 9 account for the ingest of particulate phases in the
12:08:13 10 environment by the rats, or are they nose fed only?
12:08:16 11 A These -- these are nose-only exposed.
12:08:20 12 Q I'm sorry. I said nose fed. I meant nose
12:08:25 13 only.
12:08:25 14 A Yes.
12:08:25 15 Q Is there any adjustment meant -- excuse me.
12:08:29 16 Is there any adjustment made in these studies
12:08:31 17 for the lack of contact with the ingestion of particulate
12:08:38 18 matter?
12:08:38 19 A We examined this question as part of our
12:08:42 20 development of this lifetime study where we looked at
12:08:45 21 whole body exposure versus nose only exposure, looking at
12:08:50 22 biomarkers of exposure and some biomarkers of effect. And
12:08:55 23 consistent with what other people have reported, with
12:09:00 24 regard to biomarkers of exposure, ingestion in animals,
12:09:09 25 whether they preen themselves or they eat contaminated
12:09:14 26 food or the watering system somehow is not restricted so
12:09:18 27 it wouldn't be contaminated, you have what I would call if
12:09:26 28 not invalid, so imprecise measures of exposure as to make
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12:09:32 1 it difficult to figure out what the animal has actually
12:09:36 2 been exposed to.
12:09:37 3 And there have been published reports -- let
12:09:40 4 me see. James Bond, I think he's currently at CIT in
12:09:45 5 Research Triangle, published some very nice work on

12:09:49 6 tobacco smoke, head only and whole body, and basically --
12:09:56 7 basically concluded that in terms of exposure and
12:10:01 8 dosimetry and looking at biomarkers for effect as an
12:10:05 9 additional parameter, he did not recommend that as an
12:10:09 10 approach for exposure with regard to tobacco smoke. And
12:10:13 11 that's consistent with our preliminary work and consistent
12:10:16 12 with what other people have published.

12:10:18 13 And if I might add, one of the unfortunate
12:10:30 14 consequences of whole body exposure is that when the
12:10:34 15 animals are exposed to a combustion product, whether it's
12:10:38 16 diesel engine exhaust or tobacco smoke, they tend to
12:10:42 17 filter the material through their fur. They'll stick
12:10:48 18 their nose in either a neighbor's armpit or in their own
12:10:52 19 fur to somehow reduce -- reduce the exposure.

12:10:55 20 And that's another confounder that has been
12:11:02 21 observed over the last 25 years.

12:11:04 22 Q How have you dealt with that in your ongoing,
12:11:10 23 long-term rat study?

12:11:13 24 A The -- when we did this study and concluded
12:11:19 25 it was going to be a nose-only study, as I said before, we
12:11:22 26 had done some other groups that included side by side,
12:11:26 27 nose only, and whole -- and whole body. And from a
12:11:31 28 scientific perspective, we were trying to make sure that

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12:11:34 1 the concentration that the rat was seeing, we could get at
12:11:42 2 the dose that you would have in the lungs, which was the
12:11:44 3 primary target that we were -- we are interested in.

12:11:48 4 And the only way you can do that is by
12:11:53 5 setting the parameters, the window such that that's what
12:11:56 6 you're looking at. When you talk about ingestion, you're
12:11:59 7 talking about a pathway for these materials that has not
12:12:04 8 been well studied, and the data, such as it is, would
12:12:09 9 suggest that you get a significant inactivation in the
12:12:14 10 stomach of all of the relevant or materials that people --
12:12:19 11 people are concerned about.

12:12:21 12 And so if you're talking about lung cancer,
12:12:24 13 the appropriate route of exposure is inhalation. The
12:12:28 14 appropriate target organ is the lung, and you're trying to
12:12:32 15 avoid introducing other variables that will compromise
12:12:38 16 and/or complicate your interpretation of whatever
12:12:40 17 information you get.

12:12:41 18 So we looked at it. We thought about it. We
12:12:44 19 made our decision based on the facts that I've -- I've
12:12:48 20 just given. And that's why we did what we did the way we
12:12:51 21 did it.

12:12:52 22 Q These rats that you're studying or studied,
12:12:57 23 do they preen?

12:13:00 24 A They're -- in the exposure chamber, the path
12:13:08 25 of aerosol is in a column, and their noses protrude into
12:13:16 26 that column. That's all that is exposed is the nose. And
12:13:22 27 preening is a behavior that rodents -- rodents do. But
12:13:30 28 the only part of the animal that's exposed is the nose.

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12:13:34 1 Q Do they -- are they able to lick their own
12:13:37 2 noses?

12:13:39 3 A I have never observed that, but I would not
12:13:42 4 be surprised.

12:13:43 5 Q Have you observed if any of the rats that you
12:13:48 6 studied attack and/or disable or kill other rats in the
12:13:54 7 study?

12:13:55 8 A These rats are housed in such a way as that
12:13:59 9 doesn't -- that doesn't happen. These rats are
12:14:04 10 individually identified by microchip technology. So from

12:14:07 11 a telemetry point of view, everything about them is
12:14:11 12 monitored either electronically and/or -- and/or visually
12:14:17 13 on a daily basis. So I'm not aware of any data where that
12:14:25 14 happens. And if it does, within the reports of INBIFO,
12:14:30 15 they will note specifically which rats and what group
12:14:34 16 exhibited some kind of -- some kind of behavior. But all
12:14:38 17 of that would be -- would be noted, dated, and signed as
12:14:44 18 part of good laboratory practices.
12:14:46 19 Q What is the WRA?
12:14:57 20 MR. STONE: Objection; vague and ambiguous,
12:14:58 21 calls for speculation.
12:14:59 22 THE WITNESS: Can you give me a little bit
12:15:03 23 more context.
12:15:04 24 BY MR. McGuIRE:
12:15:04 25 Q Yeah. They have to do with the WSA teams.
12:15:08 26 A Oh, okay. So it's a Philip Morris -- if it's
12:15:11 27 a Philip Morris organization.
12:15:13 28 Q You tell me. I don't know.
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12:15:14 1 A Well, WSA is an acronym for Worldwide
12:15:18 2 Scientific Affairs.
12:15:19 3 Q Okay.
12:15:20 4 A If we're talking about the same WRA, that's
12:15:23 5 Worldwide Regulatory Affairs.
12:15:25 6 Q How often does the WSA meet?
12:15:29 7 Philip Morris' WSA?
12:15:32 8 MR. STONE: Objection; assumes facts not in
12:15:33 9 evidence, lacks foundation.
12:15:35 10 THE WITNESS: You don't mean WSA, meaning
12:15:37 11 WSA? You mean WSA, meaning WRA?
12:15:41 12 BY MR. McGuIRE:
12:15:41 13 Q I have no idea. You're going to have to
12:15:48 14 straighten me out here.
A They're two separate organizations. WSA is
12:15:52 16 Dr. Solana, who is in USA. And WRA is Philip Morris
12:15:57 17 Management Corp. That's a corporate entity dealing with
12:16:01 18 regulatory type -- type issues. I don't believe the two
12:16:08 19 organizations meet regularly or have met regularly.
12:16:17 20 Recently, that I'm aware of, though, I'm sure that
12:16:19 21 Dr. Solana speaks to the head of WRA with some degree
12:16:26 22 of -- some degree of regularity. And one of the attorneys
12:16:31 23 in WRA is the person we interface with with regard to our
12:16:41 24 NTP submissions.
12:16:44 25 Q What is NPT?
12:16:49 26 A NTP, National Toxicology Program.
12:16:53 27 Q National Toxicology Program?
12:16:54 28 A Yes.
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12:16:55 1 Q While you were at Philip Morris, did you
12:17:00 2 ever participate in quarterly meetings of the WRA on
12:17:07 3 behalf of the WSA?
A I have, at their invitation, done that on
12:17:12 4 numerous occasions. Whether it was Worldwide Scientific
12:17:16 5 Affairs at that point or Scientific Affairs, if we can
12:17:18 6 dispense with any changes in the acronyms, whether the 'W'
12:17:23 7 was there before or after, the answer is yes.
12:17:27 8 Q Okay. So when -- that sounds -- I don't mean
12:17:29 9 that it was -- it sounds contrary to what you told me
12:17:35 10 about you don't believe that they interfaced regularly.
12:17:38 11
12:17:41 12 Can you explain --
12:17:43 13 A Yes.
12:17:44 14 Q -- what sounds like an inconsistency.
12:17:46 15 A Your first question, I had this vision of WSA

12:17:50 16 getting together with WRA.
12:17:53 17 Q Yeah.
12:17:53 18 A Okay. And, here, we're talking about one
12:17:57 19 person from SA or WSA participating in some part of a WRA
12:18:03 20 meeting.
12:18:04 21 Q Okay. Would the Scientific Affairs people
12:18:08 22 regularly participate in the Worldwide Regulatory Agency?
12:18:16 23 A Affairs.
12:18:17 24 Q Affairs department or group?
12:18:20 25 MR. STONE: Objection; vague and ambiguous as
12:18:21 26 to "regularly."
12:18:23 27 You can answer as best you know.
12:18:25 28 BY MR. McGUIRE:
12:18:25 1 Vail, Christians & Associates (619)544-8344 295
12:18:27 2 Q Quarterly.
12:18:30 3 A From time to time, they would invite a
12:18:34 4 scientist. Whether it was from Scientific Affairs or from
12:18:39 5 some other part of R&D. It was not limited to Scientific
12:18:44 6 Affairs. If they wanted to have an update on some -- some
technical scientific issue.
12:18:45 7 Q Okay. And you said you were that scientist
12:18:51 8 at one point or another?
12:18:52 9 A I was one of the scientists that was invited
12:18:55 10 and went up there and made presentations.
12:18:57 11 MR. McGUIRE: The rest of those are down
12:19:08 12 there.
12:19:09 13 THE WITNESS: Oh. All this is for me?
12:19:11 14 MR. McGUIRE: Yes. Although, all I want to
12:19:14 15 talk about right now is the top.
12:19:16 16 MR. MILES: Is that the same thing as this?
12:19:18 17 MR. McGUIRE: Yes.
12:19:19 18 MR. MILES: Okay.
12:19:19 19 BY MR. McGUIRE:
12:19:19 20 Q All I want to talk about is the first
12:19:22 21 document that I'll mark as 4020 for identification, which
12:19:27 22 is a document that says "Scientific Activities and Policy
12:19:30 23 Implications." It's apparently an outline for the
12:19:34 24 quarterly WRA meeting in New York on November 12, 1998,
12:19:43 25 and it indicates that it would be a presentation or it
12:19:45 26 seems to me to be a presentation from the WSA team.
12:19:48 27 (Exhibit 4020 was marked for identification.)
12:19:50 28 BY MR. McGUIRE:
12:19:50 1 Vail, Christians & Associates (619)544-8344 296
12:19:53 2 Q My first question is did you give the
12:19:56 3 presentation that is outlined in this document?
12:19:57 4 A I could very well have given this
presentation.
12:19:58 5 Q Okay. Do you want to look over this in more
12:20:06 6 detail, or should we just go right from the beginning
12:20:09 7 through that?
12:20:09 8 A Go ahead.
12:20:10 9 Q Is this document -- first of all, do you
12:20:13 10 recognize the document?
12:20:14 11 A I recognize the pages I'm looking at.
12:20:18 12 Q Okay.
12:20:20 13 A I haven't looked at the entire document yet.
12:20:23 14 Q Did you prepare the document?
12:20:29 15 A I believe I participated in the preparation
12:20:33 16 of this document.
12:20:33 17 Q There's some handwriting in the document, for
12:20:38 18 example, at page 8.
12:20:39 19 A Uh-huh.
12:20:40 20 Q Is that yours?

12:20:41 21 A No. I don't -- I don't -- I don't think
12:20:43 22 so. But it could be.
12:20:44 23 Q There's more on page 10.
12:20:48 24 A It looks too clear, but this could have been
12:20:51 25 early in the morning before five cups of coffee.
12:20:54 26 Q Look at page 10 as well.
12:20:56 27 Does that --
12:20:56 28 A That's my writing. And so maybe the other
Vail, Christians & Associates (619)544-8344 297
12:20:59 1 one is my writing as well.
12:21:00 2 Q What was the purpose of preparing the
12:21:06 3 document?
12:21:06 4 A This was a presentation, I believe, I made to
12:21:13 5 Worldwide Scientific Affairs, giving them an update on
12:21:18 6 where the company was scientifically with regard to ETS,
12:21:27 7 environmental tobacco smoke.
12:21:29 8 Q Okay. Now go to page 8. The handwritten
12:21:33 9 notes there, number of cases slash center, and then there
12:21:37 10 have been some annotations made to the results reported on
12:21:43 11 the --
12:21:43 12 A Uh-huh.
12:21:44 13 Q -- I'll call it slides.
12:21:46 14 Do you know whether this was -- do these
12:21:48 15 represent slides that you used?
12:21:49 16 A These were overheads.
12:21:51 17 Q Okay. That's what these represent, overheads?
12:21:53 18 A These were overheads.
12:21:55 19 Q Did you have a written text --
12:21:57 20 A No.
12:21:58 21 Q -- as well?
12:21:58 22 A No.
12:21:58 23 Q So you used these just to prompt your speech?
12:22:02 24 A Since I prepared them, I pretty much knew
12:22:07 25 what the content was.
12:22:09 26 Q All right. And did you make those
12:22:11 27 annotations?
12:22:11 28 A No. No. That's -- that's not the way I do a
Vail, Christians & Associates (619)544-8344 298
12:22:15 1 1. I don't know what those are.
12:22:19 2 Q Is that your handwriting that says number of
12:22:23 3 cases slash --
12:22:24 4 A That number of cases per center is mine.
12:22:26 5 Q Okay. And do you --
12:22:27 6 A And those -- those numbers are not my
12:22:32 7 numbers. That's not my -- I don't believe that's my
12:22:35 8 handwriting. But this -- this is my handwriting here on
12:22:39 9 the side.
12:22:39 10 MR. STONE: When you say "this" --
12:22:41 11 THE WITNESS: Number of cases slash center,
12:22:43 12 that's mine. Numerical values that are written within
12:22:48 13 this material on page 8, the lower portion is not mine.
12:22:54 14 BY MR. McGuIRE:
12:22:56 15 Q What does OR represent?
12:22:58 16 A Where are we?
12:22:59 17 Q Same page.
12:23:00 18 MR. STONE: You can look at the title, the
12:23:02 19 second title.
12:23:03 20 THE WITNESS: Oh. Oh. Odds ratios, which
12:23:07 21 is, for all intents and purposes, equivalent to relative
12:23:10 22 risks.
12:23:11 23 BY MR. McGuIRE:
12:23:14 24 Q And odds ratios, an odds ratio of one would
12:23:19 25 indicate no increased risk; is that right?

12:23:20 26 A That is an interpretation.
12:23:24 27 Q Is it an interpretation that Philip Morris
12:23:27 28 agrees with?
Vail, Christians & Associates (619)544-8344 299
12:23:29 1 MR. STONE: Objection; vague and ambiguous,
12:23:31 2 assumes facts not in evidence that Philip Morris has an
12:23:33 3 agreement with that issue of statistics or epidemiology.
12:23:37 4 You can answer as best you know.
12:23:39 5 THE WITNESS: I think the scientists within
12:23:41 6 Philip Morris if they saw an odds ratio of one would use
12:23:45 7 that as part of their evaluation in deciding whether or
12:23:48 8 not there was a risk. But it would definitely weigh one's
12:23:54 9 thinking towards the absence of risk, at least based on
12:23:58 10 whatever that study or studies were or involved.
12:24:01 11 BY MR. McGUIRE:
12:24:01 12 Q Is an odds ratio less than one equivalent to
12:24:08 13 an odds absence of risk?
12:24:10 14 A An odds ratio less than one is a little bit
12:24:13 15 more complicated. It depends on what the question you're
12:24:16 16 asking is. If you were talking about a vaccine or an
12:24:24 17 antibiotic or some kind of drug where you were treating a
12:24:27 18 disease and you had the population you treated versus the
12:24:32 19 population you didn't treat, an odds ratio of less than
12:24:35 20 one is what you want to see because then you're looking at
12:24:37 21 reducing risk or some kind of protective -- protective
12:24:42 22 effect.
12:24:42 23 An odds ratio less than one -- if you're
12:24:45 24 looking for increased survival based on some other
12:24:48 25 parameter, odds ratio of less than one would be an
12:24:51 26 adverse -- an adverse outcome. So it depends on the
12:24:54 27 context that you're asking the question. For -- well, it
12:25:01 28 depends on the context.
Vail, Christians & Associates (619)544-8344 300
12:25:01 1 Q The handwritten numbers, do you know from
12:25:08 2 reviewing this now whether those are accurate -- an
12:25:12 3 accurate breakdown of the number of cases reporting --
12:25:16 4 reported per center in the IARC study?
A As I sit here this morning, I can't tell you
12:25:21 5 what those numbers or those letters represent. I'd have
12:25:25 6 to go back and look at the source information for this.
Q Was this particular chart prepared by
12:25:37 7 Neuchatel?
A I don't know.
Q Was it your practice in giving a presentation
12:25:52 11 like this, to use -- use English names for the centers, or
12:25:55 12 to use names that are in maybe the host country, like
12:26:04 13 Veneis and Porta.
A Sometimes I would do both because it's more
12:26:17 15 than likely this presentation was also made in Neuchatel,
12:26:19 16 to the scientists in Neuchatel. But this could have been
12:26:24 17 prepared by Ted or Helmut Reif or Ruth Dempsey.
Q Some of the overheads have "Drafts" written
12:26:29 18 on them. Others don't.
Do you know whether any of the ones
12:26:42 19 indicating "Draft" were changed in any way between their
12:26:46 20 draft form and the form that they were in when you gave
12:26:49 21 the presentation?
A I don't know the answer to that question.
Q Are you aware of any substantial changes that
12:26:52 22 were made between drafting this in 1998 and the time you
12:26:57 23 gave the presentation?
Vail, Christians & Associates (619)544-8344 301
12:27:01 24 MR. STONE: Objection; compound, lacks
12:27:02 25
12:27:06 26
12:27:08 27
12:27:12 28
12:27:13 1

12:27:14 2 foundation, calls for speculation, assumes facts not in
12:27:17 3 evidence.

12:27:18 4 THE WITNESS: If there were, they would have
12:27:20 5 been found in the folder that holds the hard copies for
12:27:25 6 this and the subsequent presentations that would follow
12:27:29 7 this. I can't answer that, but it would be evident from
12:27:33 8 an examination of those files.

12:27:35 9 BY MR. McGUIRE:

12:27:35 10 Q If you go to page 9, on the "IARC -
12:27:42 11 Evaluation of JNCI Results," what is JNCI?

12:27:48 12 A Journal of the National Cancer Institute.

12:27:50 13 Q And on the first diamond on that overhead, it
12:28:00 14 indicates "Excess risks were lower than typically found in
12:28:03 15 many studies indicating that a larger, better controlled
12:28:06 16 study moves the risk towards 1.0." Then there's notations
12:28:13 17 on the -- in the margin regarding OR and then something
12:28:18 18 below that.

12:28:19 19 Is that your handwriting?

12:28:20 20 A Yes, it is.

12:28:20 21 Q And what -- what is it that you're portraying
12:28:23 22 there?

12:28:25 23 A The OR is the odds ratio, and I can't tell
12:28:28 24 you at this time what it is I'm trying to represent down
12:28:34 25 on the -- down on the bottom.

12:28:35 26 Q Next page, you -- that's your handwriting,
12:28:50 27 correct?

12:28:51 28 A Yes.

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12:28:51 1 Q And what were you -- what point were you
12:28:55 2 trying to either make or remember when you put down
12:28:58 3 "collectively," question mark, "interactions"?

12:29:02 4 A Yes.

12:29:03 5 Q Question mark?

12:29:03 6 A Yes. Sometimes when you're adjusting for
12:29:12 7 things that you haven't taken into consideration in the
12:29:15 8 actual design of the study, you can adjust for them or try
12:29:19 9 to adjust for them after -- after the study. And so what
12:29:28 10 you have here is the odds ratio for spousal exposure. You
12:29:32 11 have the point estimate, which is 1.16, and then the
12:29:37 12 parenthetical, which is 95 percent. CI is the confidence
12:29:42 13 interval. And then you have the range from 0.93 to 1.44.
12:29:49 14 So the 1.16 is the point estimate within that -- within
12:29:53 15 that range.

12:29:55 16 And so if you would just -- for smoking this
12:30:00 17 classification, you reduce that point estimate from 1.16
12:30:03 18 to 1.03. If you put in lack of cytological confirmation
12:30:10 19 of cases -- and I'm talking about lung cancer,
12:30:13 20 confirmation of lung cancer, you reduce it by 0.3.

12:30:17 21 If you introduce a correction for --

12:30:20 22 Q I think you misspoke. You meant .03, right?

12:30:25 23 A 0.03. Yes. I'm sorry if I misstated that.

12:30:29 24 Q That's all right.

12:30:31 25 A For confounding, you can reduce it further
12:30:35 26 by 0.01, and then based on the fact that -- whether you're
12:30:41 27 doing conditioned or unconditioned, logistic response, and
12:30:45 28 taking the -- the kind of way you take randomness in

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12:30:49 1 account, you can further lower it by 0.01.

12:30:52 2 Doing that, and if one just simply
12:30:56 3 arithmetically just adds these individual adjustments, you
12:31:01 4 reduce the point estimate to 1.08. That, in itself, is a
12:31:06 5 50-percent reduction of a nonstatistically significant
12:31:10 6 point estimate.

12:31:12 7 And my notes are that these are evaluated
12:31:18 8 individually. In reality, I think a consideration should
12:31:23 9 be given not to doing one at a time in a linear fashion,
12:31:32 10 but to evaluate what probably is a more complex
12:31:35 11 relationship between these factors that are more than
12:31:39 12 likely not linear and to test whether any of these
12:31:43 13 interact, either to remove them as adjustment factors,
12:31:49 14 make them larger, make them smaller. And so that was a
12:31:53 15 question that I had about this.

12:31:56 16 And, in fact, it was something like this
12:32:01 17 that I presented at the first NTP oral presentation in
12:32:06 18 Research Triangle Park.

12:32:08 19 Q Okay.

12:32:09 20 A Okay.

12:32:10 21 Q And this is also -- you made the same or took
12:32:15 22 the same position in response to the Cal EPA report?
12:32:20 23 Isn't that true?

12:32:21 24 A It wouldn't surprise me.

12:32:22 25 Q What -- who is or what is CRC?

12:32:30 26 A CRC is an acronym for the Contract Research
12:32:35 27 Center. It's located outside of Brussels in Belgium, and
12:32:43 28 it's part of INBIFO.

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12:32:46 1 Vail, Christians & Associates (619)544-8344
12:32:57 2 Q What's the facility in Neuchatel called?

What's the acronym for that?

12:32:58 3 A FTR.

12:33:00 4 Q FTR.

12:33:01 5 Is it true that FTR contracted with CRC and
12:33:17 6 INBIFO to do work on this rat study?

12:33:20 7 A They -- that wouldn't surprise me at all
12:33:24 8 since, from a business perspective -- and this is really
12:33:29 9 outside of my domain -- I think it's FTR that actually
12:33:35 10 owns those facilities.

12:33:37 11 Q Is FTR listed as the client?

12:33:47 12 A I don't know.

12:33:48 13 Where are we?

12:33:48 14 Q We're not anywhere on this page.

12:33:50 15 A Oh.

12:33:51 16 Q This is just something that occurred to me.

12:33:53 17 A In the documents, if -- I think Mr. Stone
12:33:56 18 turned over to you some INBIFO documents. And if I
12:34:00 19 remember correctly, in those documents, it will say CRC,
12:34:05 20 and then it will say maybe client. And then it will have
12:34:08 21 FTR Neuchatel.

12:34:11 22 Now, I would say the people at WRA who heard
12:34:16 23 this more than likely knew of that relationship. I know
12:34:21 24 some of them for sure did. I can't testify that every
12:34:24 25 single person in WRA knew that.

12:34:27 26 Q And the only person that has permission to
12:34:31 27 obtain and review the data is the client, by contract?
12:34:37 28 Isn't that true?

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12:34:38 1 Vail, Christians & Associates (619)544-8344

12:34:40 2 A I'm not sure I understand what you're --

12:34:45 3 MR. STONE: Objection; calls for a legal
12:34:46 4 conclusion.

12:34:46 5 BY MR. MCGUIRE:

12:35:05 6 Q Would you turn to page 13, please.

12:35:06 7 A Yes.

12:35:13 8 Q Under the "U.S. (16 cities), there's two
12:35:19 9 quotes or cites to Jenkins. One is the 16-cities study,
12:35:22 10 and the other one is representative study submitted for
12:35:22 11 publication.

Has this study been published?

12:35:24 12 A Actually, several studies -- the study
12:35:29 13 referred to here has been published. And subsequent
12:35:31 14 studies related to this have also been published.
12:35:34 15 Q Okay. So the representative study that you
12:35:36 16 referred to on this overhead has now -- is now part of the
12:35:40 17 published peer-reviewed literature?
12:35:42 18 A And more than that, I think the data has been
12:35:46 19 turned over -- the underlying data has been turned over to
12:35:53 20 other people who are interested in it.
12:35:54 21 Q Turn to page 18.
12:36:17 22 A Yes.
12:36:20 23 Q Under "Exposure assessment," what does the
12:36:24 24 reference to "Repace model" mean?
12:36:28 25 A Over the last approximately 20 years,
12:36:33 26 Mr. Repace has been publishing a series of models, more or
12:36:42 27 less each time he's modified it, that has to do with
12:36:46 28 estimating or approximating ETS exposure in human
Vail, Christians & Associates (619)544-8344 306
12:36:51 1 populations.
12:36:52 2 And we were trying to understand his models
12:37:02 3 as it relates to what was evident from not model
12:37:10 4 hypothetical constructs, but from real world -- real world
12:37:14 5 data. That's what's represented here. And I think Philip
12:37:18 6 Morris scientists are still doing that, because Mr. Repace
12:37:23 7 continues to use this model, publish -- publish on this
12:37:32 8 model.
12:37:32 9 Q Does he -- does his model take into account
12:37:40 10 personal monitoring studies, if you know?
12:37:42 11 A Not that I'm aware of.
12:37:44 12 Q And what personal monitoring studies are you
12:37:46 13 referring to in the outline here?
12:37:48 14 A Well, I'm not specifically sure, but I
12:37:51 15 wouldn't be surprised if I'm referring to something we
12:37:57 16 just talked about. And that's the Jenkins 16-City Study,
12:38:01 17 which is a personal monitoring.
12:38:03 18 Q Has Dr. Jenkins reviewed Mr. Repace's work?
12:38:07 19 A I believe he has.
12:38:08 20 Q Did he do so at the request of Philip Morris?
12:38:11 21 A No. I think he did so self-stimulated. But
12:38:21 22 did I talk to Roger about his data as it relates to Jim
12:38:28 23 Repace's model? I bet you I did.
12:38:30 24 Q What was the results of those discussions?
12:38:36 25 A I can't say specifically what the results of
12:38:38 26 the discussions were, other than for Roger to come back to
12:38:40 27 me and say Jim Repace's model is not adequate for the data
12:38:46 28 we've collected.
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12:38:47 1 Q What did you understand it to mean by "not
12:38:49 2 adequate"?
12:38:50 3 A The model doesn't fit the data.
12:38:52 4 Q Does -- did you understand him to mean that
12:38:56 5 the model -- excuse me -- that the data disputes the
12:39:01 6 accuracy or validity of the model?
12:39:03 7 A Well, my understanding of the statement that
12:39:09 8 the model doesn't fit the data, in normal conversation
12:39:16 9 between two scientists, you are questioning the validity
12:39:20 10 of the model.
12:39:21 11 Q Have you made -- have you questioned the
12:39:25 12 validity of Mr. Repace's model before the Cal EPA?
12:39:30 13 A It's possible. I don't -- I don't remember
12:39:34 14 specifically. But I wouldn't be surprised.
12:39:36 15 Q Have you done so before the Department of
12:39:39 16 Health and Human Services?

12:39:44 17 A You mean NTP?
12:39:45 18 Q Yes.
12:39:49 19 A I may have or somebody else may have.
12:39:56 20 Q Mr. Repace appears again at the next slide
12:40:00 21 regarding a review of J. Repace publications.
12:40:04 22 A Uh-huh.
12:40:05 23 Q What did you say?
12:40:07 24 A This is under the header "U.S. OSHA
12:40:12 25 Scientific activity -- activities." And it's the
12:40:15 26 second -- the second diamond. And it relates to OSHA.
12:40:21 27 I'm not sure at this point in time whether
12:40:24 28 Mr. Repace was still a government employee. He was with
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12:40:28 1 EPA for a number of years and was on some kind of loan to
12:40:35 2 OSHA during -- during some of their hearings. And OSHA,
12:40:44 3 over the course of time, I believe, relied in some way on
12:40:48 4 Mr. Repace and some aspects of his model in their
12:40:54 5 deliberations with regard to the notice of proposed rule
12:40:58 6 making, I think, with respect to indoor air quality.
12:41:04 7 Q Was Mr. Repace's model cited by the NTP as
12:41:11 8 part of the justification for their conclusions?
12:41:14 9 MR. STONE: Objection; the document speaks
12:41:15 10 for itself.
12:41:16 11 THE WITNESS: It could be. I mean, I -- we
12:41:20 12 just went through it, and I may have seen Mr. Repace --
12:41:23 13 Mr. Repace and maybe Lowrey's name in one such piece.
12:41:30 14 BY MR. McGUIRE:
12:41:32 15 Q Has Dr. Jenkins published his review of
12:41:36 16 Mr. Repace's model?
12:41:37 17 A I think in one or more of Dr. Jenkins'
12:41:42 18 publications, he has indicated that the model does not fit
12:41:48 19 the real world data obtained in the 16-Cities Study.
12:41:53 20 Which of those publications -- I don't believe it was the
12:41:56 21 first -- the first publication. But it was in at least
12:41:58 22 one subsequent publication of Dr. Jenkins and his
12:42:03 23 colleagues at Oak Ridge National Labs.
12:42:06 24 Q Was the 16-Cities Study funded by Philip
12:42:12 25 Morris?
12:42:12 26 A It was funded by the Center for Indoor Air
12:42:15 27 Research, which is a not for profit organization that
12:42:22 28 receives at least half of its funds from Philip Morris.
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12:42:26 1 The other funds primarily came from other tobacco
12:42:30 2 companies, including Lorillard and Reynolds. Whether
12:42:35 3 B&W -- B&W was not a party to CIAR at the time the 16-City
12:42:41 4 Studies were -- were done.
12:42:43 5 Q How did Philip Morris -- let me withdraw
12:42:56 6 that.
12:42:57 7 Did Philip Morris attempt at some point in
12:43:00 8 time to improve the credibility of CIAR, despite the fact
12:43:08 9 that its work was being funded by the industry?
12:43:12 10 MR. STONE: Objection; assumes facts not in
12:43:13 11 evidence, argumentative, compound, lacks foundation, vague
12:43:17 12 and ambiguous.
12:43:18 13 THE WITNESS: It was a fact evident to
12:43:24 14 anybody receiving funds from CIAR, and it was a voluntary
12:43:30 15 application submission for the vast majority of
12:43:35 16 applicants. And on the publications which attributed CIAR
12:43:39 17 and that presentations made in which funding from CIAR was
12:43:43 18 acknowledged.
12:43:46 19 Did we try to continue to enhance recognition
12:43:52 20 of CIAR and its contributions in this area? I would say
12:43:57 21 yes. And so within that context, in continuing

12:44:02 22 enhancement of the center as it relates to scientific
12:44:07 23 contributions in this area, that's something that we did
12:44:09 24 until the doors closed.
12:44:11 25
BY MR. McGuIRE:
12:44:11 26 Q Let's go to the next, page 22. You see some
12:44:29 27 of the names that you listed off yesterday. Mr. -- or
12:44:34 28 Dr. -- I'm going to assume he's a doctor. All of these
Vail, Christians & Associates (619)544-8344 310
12:44:38 1 people are some type of Ph.D.
12:44:42 2 Gullotta, does he work for Philip Morris?
12:44:46 3 A Dr. Frank Gullotta --
12:44:48 4 Q Yes.
12:44:49 5 A -- is a scientist within Dr. Solana's
12:44:51 6 organization. He is a Ph.D., behavioral psychologist.
12:44:57 7 Been with the company for 20 something years.
12:45:01 8 Q And he has established Philip Morris'
12:45:08 9 scientific position on addiction?
12:45:10 10 MR. STONE: Objection; vague and ambiguous.
12:45:12 11 BY MR. McGuIRE:
12:45:12 12 Q Is that correct?
12:45:12 13 A No. I think you're reading the header
12:45:15 14 incorrectly. "Establishment of scientific positions" is a
12:45:21 15 dynamic and a process that continues -- continues to go
12:45:25 16 on. And it's going on right now, because these three
12:45:33 17 individuals and myself and one Mitch Ritter from Neuchatel
12:45:40 18 are on the current scientific position team for
12:45:44 19 addiction. And there will be a presentation made in
12:45:47 20 Richmond next month.
12:45:49 21 And I think subsequent to that, Dr. Solana
12:45:53 22 will probably go up to New York and talk to folks in WRA
12:45:59 23 and other individuals about where our current -- our
12:46:04 24 current scientific thinking is on this.
12:46:07 25 Q On addiction?
12:46:08 26 A Yes.
12:46:08 27 Q Have you provided, as far as you know, when I
12:46:13 28 asked you questions about addictions yesterday, the
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12:46:16 1 current scientific thinking of Philip Morris on addiction?
12:46:19 2 A I gave you the answer for that.
12:46:23 3 Q Ammonia; what is Philip Morris' scientific
12:46:29 4 position on ammonia?
12:46:30 5 MR. STONE: Objection; beyond the scope on
12:46:32 6 which this witness has been asked to testify; namely,
12:46:36 7 issues related to ETS, overbroad, vague and ambiguous.
12:46:40 8 THE WITNESS: This has nothing to do with
12:46:43 9 environmental tobacco smoke. This has to do with issues
12:46:48 10 raised with regard to our use of ammonia that emanated
12:46:54 11 originally in 1994 with some claims that Dr. Kessler made
12:47:00 12 before the Waxman Congressional committees.
12:47:05 13 BY MR. McGuIRE:
12:47:05 14 Q Does he claim that ammonia was used to spike
12:47:10 15 or alter the pH of tobacco so as to increase the delivery
12:47:14 16 of nicotine?
12:47:16 17 MR. STONE: Same objections. Also compound.
12:47:18 18 BY MR. McGuIRE:
12:47:18 19 Q Is that the claim?
12:47:19 20 A Remove the word "spike."
12:47:21 21 Q Add?
12:47:22 22 A Huh?
12:47:22 23 Q Add?
12:47:24 24 A No. That ammonia was used to somehow modify
12:47:28 25 the delivery of nicotine. Now, at various points in time,
12:47:33 26 pH came, pH went. Now pH is back. So I think the

12:47:38 27 fairest, most global way of saying it is the allegation
12:47:44 28 is, that the use of ammonia increases the impact of the
Vail, Christians & Associates (619)544-8344 312
12:47:48 1 nicotine on the smoker, by whatever mechanism.
12:47:50 2 Q And whenever you -- next to ammonia -- first
12:47:54 3 of all, you say that ammonia or the issue has nothing to
12:47:57 4 do with ETS, correct?
12:47:59 5 A That's right.
12:48:00 6 Q Well, let me just ask you hypothetically if
12:48:02 7 ammonia does increase nicotine and if nicotine is
12:48:05 8 addictive, doesn't that mean more ETS is going to be
12:48:09 9 produced by a smoker?
12:48:10 10 MR. STONE: Objection; compound.
12:48:11 11 BY MR. McGuIRE:
12:48:11 12 Q Who is addicted to the cigarettes?
12:48:14 13 MR. STONE: Incomplete hypothetical without
12:48:16 14 all the elements, lacks foundation, calls for speculation,
12:48:18 15 vague and ambiguous.
12:48:19 16 THE WITNESS: I'm not sure I understand your
12:48:20 17 question.
12:48:20 18 BY MR. McGuIRE:
12:48:20 19 Q It's okay.
12:48:24 20 Then we have next to "Ammonia," Seeman,
12:48:27 21 S-e-e-m-a-n, Haussmann, and Leyden.
12:48:31 22 What is that meant --
12:48:33 23 A That's Dr. Jeffrey Seeman, Ph.D. in
12:48:40 24 chemistry, probably one of the world's authorities on the
12:48:44 25 chemistry and -- physical chemistry of ammonia, pH, and
12:48:49 26 nicotine.
12:48:50 27 Dr. Hans Juergen Haussmann from INBIFO, and
12:48:57 28 Dr. Don Leyden former chair of analytical chemistry of
Vail, Christians & Associates (619)544-8344 313
12:49:01 1 Colorado State and a recent retired employee of Philip
12:49:05 2 Morris. And they were working on scientific position
12:49:13 3 papers with regard to ammonia. Some of this work resulted
12:49:16 4 in experiments which have been presented and published in
12:49:21 5 the peer-reviewed literature. You can find Dr. Seeman's
12:49:25 6 name either in the first, middle, or last of those
12:49:29 7 publications.
12:49:29 8 Q Did any of the work that they do not
12:49:32 9 result -- not result in published literature?
12:49:35 10 A If it's not been published, they're still
12:49:38 11 working on to publish it. But as far as I know, they have
12:49:45 12 been charged with publishing everything that they're doing.
12:49:51 13 Q And now we have "ETS & health."
12:49:54 14 Who is Sanders?
12:49:55 15 A Ted Sanders in Neuchatel.
12:49:58 16 Q And in 1998, you were not heading up the
12:50:06 17 effort regarding ETS and health?
12:50:08 18 A Oh, I was -- I was heading it up. But I
12:50:12 19 delegated some things. And Ted was my right-hand -- my
12:50:20 20 right-hand person.
12:50:20 21 Q Has he published in the area of ETS and
12:50:23 22 health?
12:50:23 23 A No.
12:50:25 24 Q Has he stimulated other people to publish?
12:50:30 25 A Yes, sir.
12:50:32 26 Q Did the stimulation include money?
12:50:34 27 A Yes. Money to carry out research. Money to
12:50:38 28 carry out analysis. Money to attend scientific --
Vail, Christians & Associates (619)544-8344 314
12:50:45 1 scientific meetings, for example.
12:50:46 2 Q Do you know how much money in 1998 Mr. -- or

12:50:52 3 Dr. Sanders was given to stimulate?
12:50:55 4 A I can't tell you how much money Dr. Sanders
12:50:57 5 was given to do that, but that would be evident from an
12:51:02 6 examination of the financial reports that he was
12:51:05 7 responsible for.
12:51:06 8 Q When you say "that would be evident from the
12:51:13 9 financial reports," what do you mean? What financial
12:51:16 10 reports are you talking about?
12:51:17 11 A He had a budget. It was a budget within my
12:51:19 12 budget. And when he spent money, that money had to be
12:51:28 13 accounted for. And it was accounted for. If it was an
12:51:32 14 individual, it had that individual's name. It had the
12:51:34 15 title of the project and any outcomes that resulted from
12:51:37 16 that.
12:51:37 17 Q Okay. Now, your budget included items other
12:51:40 18 than ETS and health?
12:51:41 19 A Yes.
12:51:41 20 Q Okay. What percentage -- and give me your
12:51:46 21 best estimate as to what percentage of your budget was
12:51:51 22 allocated to Mr. Sanders in 1998.
12:51:55 23 A I can tell you not simply for Mr. Sanders,
12:52:00 24 but for ETS, within Scientific Affairs in 1998, the most
12:52:06 25 significant portion -- I can't give you a -- it's more
12:52:09 26 than 50 percent was ETS related.
12:52:13 27 Q Are you including product development things
12:52:15 28 such as Accord when you make this 50 percent?
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12:52:18 1 A We are not the people responsible financially
12:52:24 2 for product development. That's a different entity. So
12:52:29 3 if you're asking me about the no sidestream Accord
12:52:34 4 product, that's not part of my answer. That's --
12:52:39 5 Q How much are we talking about at 50 percent?
12:52:48 6 A Well, I'd have to factor in the Center for
12:52:51 7 Indoor Air Research, which, in and of itself, is 6- to 7
12:52:55 8 million dollars of Philip Morris' contribution at that
12:52:59 9 time. These are, Mr. McGuire, rough estimates. And then
12:53:02 10 I would say another several million dollars more within
12:53:06 11 Scientific Affairs. And I'm not including the monies
12:53:12 12 related to what INBIFO was carrying out at the time with
12:53:17 13 regard to the lifetime study, which are several million
12:53:21 14 dollars -- several million dollars more.
12:53:24 15 Q Is Mr. Sanders still with the company?
12:53:30 16 A Dr. Sanders is --
12:53:31 17 MR. STONE: Asked and answered.
12:53:34 18 THE WITNESS: -- still with the company,
12:53:36 19 yes.
12:53:36 20 Sorry.
12:53:37 21 BY MR. McGuIRE:
12:53:37 22 Q Is he still in charge of ETS and health?
12:53:40 23 MR. STONE: Objection; assumes facts not in
12:53:41 24 evidence, misstates the witness's prior testimony.
12:53:44 25 THE WITNESS: Yesterday, we went through
12:53:46 26 this, and I indicated to you that under Dr. Solana's
12:53:50 27 leadership, that both Dr. Sanders and Dr. Walk are the
12:53:53 28 principals responsible for ETS within Worldwide Scientific
Vail, Christians & Associates (619)544-8344 316
12:53:57 1 Affairs.
12:53:57 2 MR. STONE: It's getting -- approaching
12:54:02 3 1 o'clock.
12:54:03 4 MR. McGuIRE: Oh, I'm sorry. I got lost
12:54:05 5 there.
12:54:05 6 MR. STONE: I don't know if you want to --
12:54:07 7 MR. McGuIRE: Let me just -- one quick -- a

12:54:09 8 few more quick questions, and then I'll be done with this
12:54:12 9 document. Then we'll take a break for lunch, and I
12:54:14 10 apologize to everybody for going well beyond what I
12:54:17 11 intended to do.

12:54:18 12 BY MR. McGUIRE:

12:54:18 13 Q Where we have a switching of the order of
12:54:23 14 names, as we do with the Gullotta group and the Takada
12:54:29 15 group at the bottom, the top and the bottom, is there any
12:54:33 16 significance to that?

12:54:34 17 A Yes.

12:54:35 18 Q What is that?

12:54:35 19 A The significance is who is the person that
12:54:38 20 has the lead in that. So if you see Gullotta underlined,
12:54:45 21 he is the principal responsible. And Takada and Davies
12:54:49 22 would be part of the supportive group of the team. But it
12:54:53 23 would be the Gullotta team.

12:54:55 24 Q The last page, No. 24.

12:54:59 25 When you look at this page, does that
12:55:00 26 indicate to you that every one of these people were part
12:55:03 27 of the team?

12:55:04 28 A I think what this represents is these are the
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12:55:10 1 people that helped me put together this presentation.

12:55:12 2 Q Okay. So your previous answer remains the
12:55:14 3 same, even after seeing this, it was just one person? It
12:55:18 4 could have been me, probably was me, and these other
12:55:22 5 people helped me?

12:55:24 6 MR. STONE: Objection; compound, misstates
12:55:25 7 the witness's prior testimony.

12:55:28 8 You can answer.

12:55:33 9 THE WITNESS: Could you restate the question?

12:55:34 10 MR. McGUIRE: I'll try to shorten it up a
12:55:36 11 little bit.

12:55:36 12 BY MR. McGUIRE:

12:55:36 13 Q Does your previous answer remain the same?

12:55:39 14 A That I probably made this presentation, yes.

12:55:41 15 MR. McGUIRE: Thanks. Okay.

12:55:46 16 You now have with you a copy -- or I've given
12:55:48 17 to you and your counsel, a copy of a number of documents
12:55:54 18 that we may touch upon this afternoon. And so in order to
12:56:00 19 allow you some time to, I don't know, go through them --
12:56:06 20 I'm sure some of them you have seen before -- why don't we
12:56:10 21 make this -- come back at 2:20?

12:56:14 22 MR. STONE: Let's come back and -- let's try
12:56:15 23 to take a short break and let you ask him questions about
12:56:18 24 them so we make sure we get done today, would be my
12:56:20 25 preference. Let's try to get back at least by 2:00.

12:56:24 26 Can we do that?

12:56:25 27 MR. McGUIRE: Okay. Back by 2:00.

12:56:27 28 VIDEOGRAPHER: We are off the record. The

Vail, Christians & Associates (619)544-8344 318
12:56:29 1 time is 12:56.

12:56:30 2 (Lunch recess.)

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14:09:00 1 San Diego, California; Friday, June 2, 2000; 2:09 p.m.
14:09:00 2
14:09:00 3 VIDEOGRAPHER: Good afternoon. We are back
14:09:05 4 on the record. The time is 2:09.
14:09:08 5
14:09:08 6 EXAMINATION (RESUMED)
14:09:08 7 BY MR. McGUIRE:
14:09:08 8 Q Dr. Carchman, in front of you, the first
14:09:16 9 document I see in the pile that I gave you before lunch is
14:09:20 10 a listing of studies relating to the relationship between
14:09:27 11 ETS and lung cancer and then a separate listing of ETS and
14:09:31 12 heart disease. This, apparently, comes from the Philip
14:09:37 13 Morris website. Although, I can't tell you when it was
14:09:40 14 printed off that site.
14:09:41 15 The questions are as follows: No. 1, do you
14:09:44 16 recognize this to be the listing of epidemiological
14:09:47 17 studies regarding ETS and lung cancer and ETS and heart
14:09:51 18 disease that is presently posted on the Philip Morris
14:09:55 19 website?
14:09:56 20 MR. STONE: Objection; lacks foundation. The
14:09:59 21 website will speak for itself as to what it has on it
14:10:03 22 presently.
14:10:03 23 You can confirm as best you know.
14:10:05 24 THE WITNESS: This was a list that was on the
14:10:08 25 website. Whether it's still the same list, I don't know.
14:10:11 26 I haven't checked the website for this information in the
14:10:15 27 last week. But this is a list of information that you can
14:10:20 28 click on to, yes.
Vail, Christians & Associates (619)544-8344 320
14:10:22 1 (Exhibit 4021 was marked for identification.)
14:10:22 2 BY MR. McGUIRE:
14:10:22 3 Q And there are 47 studies listed.
14:10:25 4 Do you know whether all 47 are either
14:10:29 5 refereed or peer-reviewed articles?
14:10:34 6 A We can go through -- through them. I can't
14:10:36 7 tell you off the top of my head, without examining each
14:10:39 8 one.
14:10:40 9 Q Well, the question I really have is whether
14:10:45 10 Philip Morris only listed peer review -- peer-reviewed
14:10:49 11 articles or not.
14:10:50 12 A No.
14:10:53 13 Q Okay. Do these articles encompass the same
14:11:04 14 group of articles that you provided the NTP in response to
14:11:10 15 their invitation to comment on the listing of ETS as a
14:11:16 16 known carcinogen?
14:11:18 17 MR. STONE: Objection; misstates the

14:11:19 18 witness's prior testimony, assumes facts not in evidence.
14:11:23 19 And under the best evidence rule, the documents speak for
14:11:27 20 themselves with respect to whether they're the same or
14:11:30 21 not.

14:11:30 22 THE WITNESS: I mean, I would have to go back
14:11:32 23 and look at those submissions and just check -- check
14:11:35 24 through this. But this looks like, at least up through
14:11:40 25 1998, an accurate list. I think there were some
14:11:45 26 additional studies that probably need to go on here. And
14:11:55 27 there were some things that are doctoral theses or thesi
14:12:02 28 that have now been published. I'm looking on page 3,

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14:12:05 1 No. 37, the Cardenas thesis appears as a publication.
14:12:11 2 It's not on this list because it's subsequent to this.
14:12:14 3 It's a Cardenas and Tune, Michael Tune, from the American
14:12:17 4 Cancer Society. So I would say this -- this is accurate,
14:12:20 5 but it probably needs to be updated.

14:12:22 6 Q How often is this list updated, if you know?

14:12:27 7 A I don't know.

14:12:27 8 Excuse me. So this is 4021?

14:12:36 9 Q Correct.

14:12:36 10 Now, would it be your estimate that the
14:12:39 11 substantial majority of these studies would be
14:12:41 12 peer-reviewed studies?

14:12:43 13 A Substantial, meaning more than 50 percent?

14:12:46 14 Q Yes. I'm trying to figure out which is the
14:12:48 15 easiest way --

14:12:49 16 A Yeah, I think so.

14:12:50 17 Q -- to go through this. Just tell me which
14:12:53 18 ones are and which ones aren't.

14:12:55 19 A The majority of them are peer-reviewed.

14:12:57 20 Q Okay.

14:12:58 21 A So No. 37 is a nonpublished doctoral thesis
14:13:03 22 out of Emory University. But I can tell you they have
14:13:08 23 published parts of this in a peer-reviewed journal.

14:13:13 24 Q Okay.

14:13:14 25 A Okay. So the majority are
14:13:16 26 peer-reviewed. But that's -- that's an example of one --
14:13:23 27 an unusual example of one that's not but was later
14:13:27 28 on. But that's not represented on this list, I think.

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14:13:31 1 Q Working your way through the list, would you
14:13:33 2 tell me just those that you know, without any further
14:13:36 3 reference or research, that they are -- that the study is
14:13:40 4 not a peer-reviewed article.

14:13:42 5 A Okay. Start from the beginning?

14:13:45 6 Q If you would.

14:13:45 7 A Okay. No. 2 is part of a book. No. 5 is a
14:14:04 8 conference. No. 6 is a conference. No. 9 is not a
14:14:17 9 journal article that's been peer-reviewed. No. 19,
14:14:37 10 No. 20, No. 21. I believe, No. 31. We mentioned 37
14:15:05 11 already. No. 38. No. 1 on page 3 of 5 under "ETS and
14:15:27 12 Heart Disease." No. 4. No. 6. I believe, No. 8.
14:15:52 13 No. 10. No. 14. That's my -- that's it.

14:16:25 14 Q The ETS and heart disease articles are
14:16:28 15 identified as being selected studies.

14:16:30 16 What criteria was used, if you know?

14:16:33 17 A As I sit here today, I can't -- I can't tell
14:16:38 18 you the answer to that.

14:16:39 19 Q Does the 47 articles on ETS and lung cancer
14:16:43 20 represent all of the peer-reviewed articles on the
14:16:47 21 subject?

14:16:48 22 A Well, some of them aren't articles. Some of

14:17:01 23 them are either abstracts or doctoral graduate student
14:17:05 24 dissertations. And, just quickly looking through this,
14:17:10 25 there are papers that are analyses of other people's work
14:17:15 26 that are missing from here. So there might -- there might
14:17:26 27 be some -- some studies that are absent from here, but I
14:17:30 28 don't know if they're absent because they're not original
Vail, Christians & Associates (619)544-8344 323
14:17:34 1 studies, but analyses of other studies.
14:17:38 2 Q I do see a printout time on this. This is
14:17:43 3 June 2, 2000.
14:17:45 4 A Uh-huh.
14:17:45 5 Q So that would lead me to believe that this is
14:17:48 6 what's currently on the website?
14:17:49 7 A If that's what it says.
14:17:51 8 Q I'm sorry.
14:17:53 9 A Go ahead.
14:17:54 10 Q I notice Dr. Witschi's work is not on here.
14:17:57 11 Is there a reason for that?
14:17:58 12 A Sure.
14:17:58 13 Q What's that?
14:17:59 14 A It doesn't fit under epidemiological
14:18:01 15 studies. Dr. Witschi's work is not an epidemiological
14:18:04 16 study.
14:18:05 17 Q So that one criteria for the 47 studies is it
14:18:08 18 had to be an epi work?
14:18:10 19 A Human-related study.
14:18:12 20 Q Any other criteria for listing on the 47?
14:18:16 21 A These are all epidemiological studies.
14:18:21 22 They're all human studies, and it represents, I think,
14:18:25 23 what's been published around the world, not limited to the
14:18:29 24 United States.
14:18:29 25 Q Do any of these studies, to your knowledge,
14:18:31 26 conclude that there is a causal relationship between ETS
14:18:35 27 and lung cancer?
14:18:36 28 MR. STONE: Objection; compound, lacks
Vail, Christians & Associates (619)544-8344 324
14:18:39 1 foundation. The documents speak for themselves.
14:18:44 2 THE WITNESS: Some of them do, yes, and some
14:18:46 3 of them don't.
14:18:48 4 BY MR. MC GUIRE:
14:18:48 5 Q The same question regarding the selective
14:18:52 6 studies regarding ETS and heart disease.
14:18:54 7 Do some of these studies, to your knowledge,
14:18:58 8 conclude that there is a relationship or an association
14:19:02 9 between ETS and heart disease?
14:19:04 10 MR. STONE: Same objections.
14:19:05 11 THE WITNESS: Some do and some don't.
14:19:07 12 (Exhibit 4022 was marked for identification.)
14:19:07 13 BY MR. MC GUIRE:
14:19:07 14 Q The next document I would like to discuss
14:19:18 15 we'll mark for identification as 4022. It should be --
14:19:25 16 it's not that one there. It's a little thicker, and it is
14:19:30 17 Philip Morris Management Corporation's "Comment Concerning
14:19:34 18 Procedural Issues in the Development and Use of NTP's ETS
14:19:38 19 Background Document and the Proposed Listing of ETS as a
14:19:43 20 Known Human Carcinogen."
14:19:44 21 A Uh-huh.
14:19:45 22 Q Do you have that?
14:19:46 23 A Yes.
14:19:46 24 Q Does this document represent what it says it
14:19:49 25 is?
14:19:49 26 MR. STONE: Objection; lacks foundation,
14:19:51 27 calls for speculation, no personal knowledge.

14:19:56 28

THE WITNESS: I don't -- I can't answer that

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14:19:58 1 question.

14:19:58 2 BY MR. McGUIRE:

Q Who prepared this document?

14:20:00 4 MR. STONE: Objection; lacks foundation,
14:20:01 5 calls for speculation.

14:20:04 6 THE WITNESS: The -- I believe, the folks in
14:20:06 7 Worldwide Regulatory Affairs.

14:20:09 8 BY MR. McGUIRE:

14:20:09 9 Q Did you have input to it with respect to the
14:20:14 10 document?

14:20:15 11 MR. STONE: Objection; lacks foundation.

14:20:16 12 THE WITNESS: I don't believe so, and if I
14:20:18 13 did, it was probably minimal. But I don't remember having
14:20:21 14 input into this.

14:20:22 15 BY MR. McGUIRE:

14:20:22 16 Q When you say "the folks at Worldwide
14:20:25 17 Health" --

14:20:25 18 A Excuse me. Regulatory.

14:20:28 19 Q I'm sorry.

14:20:29 20 Is there an individual that it was most
14:20:31 21 likely, based on the time period and who was working for
14:20:38 22 the company at that time?

14:20:39 23 A Just as we went through the team approach
14:20:46 24 for I think the other scientific positions, as we talked
14:20:50 25 about in one of the earlier documents, there was probably
14:20:55 26 a team leader and then a team associated with this. Who
14:20:59 27 it was at that time, I can't tell you, as I sit here this
14:21:04 28 afternoon.

14:21:05 1 Vail, Christians & Associates (619)544-8344 326

14:21:10 2 Q Did you review this document before it was
put in final form?

14:21:13 3 MR. STONE: Objection; lacks foundation.

14:21:16 4 THE WITNESS: I could have. I don't remember.

14:21:19 5 BY MR. McGUIRE:

14:21:19 6 Q Do you know if Mr. Sanders -- or Dr. Sanders
14:21:22 7 had any input regarding this document?

14:21:25 8 A I don't think so.

14:21:29 9 Q The next one would be the secondhand smoke
14:21:53 10 web page information. We'll mark for identification as
14:21:57 11 4023.

14:21:58 12 (Exhibit 4023 was marked for identification.)
14:22:00 13 BY MR. McGUIRE:

14:22:00 14 Q Does this appear to be the information
14:22:05 15 presently on the web regarding Philip Morris' public
14:22:14 16 positions on secondhand smoke?

14:22:18 17 A This is, just looking on page 2 of this,
14:22:22 18 because it has the click for the NTP report, this is the
14:22:26 19 most recent version of the Philip Morris website dealing
14:22:32 20 with -- dealing with secondhand smoke.

14:22:33 21 Q Do you know how extensive this section was
14:22:42 22 before the click for the NTP report was added? Was it
14:22:53 23 pretty much everything but that?

14:22:55 24 A Yes, sir.

14:23:01 25 MR. STONE: I do notice on this exhibit, most
14:23:03 26 of the right margin on each page has been cut off.

14:23:06 27 MR. McGUIRE: I just saw that myself.

14:23:08 28 MR. STONE: I think probably you could get a
Vail, Christians & Associates (619)544-8344 327
14:23:10 1 better copy that would be readable.

14:23:11 2 MR. McGUIRE: Since I'm not going to ask him
14:23:14 3 to read it, I will do that. But he will probably be gone

14:23:18 4 by the time I do it. So.
14:23:19 5 Perhaps we can get you a copy to the court
14:23:25 6 reporter before you get your -- a copy of the transcript
14:23:30 7 to review. And I'll mark it in *absencia* as 4023a and
14:23:38 8 provide it to the court reporter who will provide it to
14:23:41 9 everybody else. And if there are objections to it at that
14:23:43 10 time, other than the objection now, which, I agree with,
14:23:48 11 is that it's not legible at the margins.
14:23:51 12 THE WITNESS: So are we done with this one?
14:23:53 13 MR. MC GUIRE: Just leave it there for right
14:23:55 14 now. We'll be adding a version of it that is readable on
14:24:01 15 the right-hand margin.
14:24:02 16 (Exhibit 4023a was marked for
14:24:02 17 identification.)
14:24:02 18 BY MR. MC GUIRE:
14:24:05 19 Q Okay. Let's talk about the document that
14:24:08 20 says "Confidential" on it, the Dr. Wakeham Tobacco and
14:24:14 21 Health R&D Approach presentation on November 15, 1961.
14:24:18 22 (Exhibit 4024 was marked for identification.)
14:24:18 23 MR. STONE: In accordance with the terms of
14:24:20 24 the protective order, this document should be separately
14:24:23 25 bound and all testimony regarding this document will be
14:24:26 26 designated confidential in accordance with the terms of
14:24:28 27 the protective order.
14:24:30 28 That means, among other things, that the
14:24:32 1 Vail, Christians & Associates (619)544-8344 328
14:24:35 2 court reporter and the videographer both need to have
14:24:38 3 signed confidentiality undertakings. And I just inquire
14:24:39 4 now whether or not if they have.
14:24:45 5 Off the record is fine.
14:24:47 6 VIDEOGRAPHER: We are off the record. The
14:24:48 7 time is 2:25.
14:33:30 8 (Discussion off the record.)
14:33:36 9 VIDEOGRAPHER: We are back on the record.
14:34:06 10 The time is 2:34.
14:34:06 11 BY MR. MC GUIRE:
14:34:09 12 MR. MC GUIRE: February -- I'm looking for a
14:34:10 13 February document.
14:34:39 14 4025 for identification is a handwritten
14:34:49 15 letter from J.L. Charles to T.S. Osdene, and I can't read
14:34:53 16 the date, other than it's February 23rd, and it appears to
14:34:58 17 be '80 something or other.
14:34:58 18 THE WITNESS: '82.
14:34:58 19 (Exhibit 4025 was marked for identification.)
14:34:58 20 BY MR. MC GUIRE:
14:35:01 21 Q Have you seen this -- first of all, do you
14:35:03 22 recognize Dr. Charles' handwriting?
14:35:05 23 A This appears to be Jim's handwriting.
14:35:10 24 Q Okay. Have you discussed this document
14:35:12 25 either in deposition or in trial testimony in the past?
14:35:13 26 A Yes.
14:35:28 27 Q Okay. Have you discussed this document in
14:35:30 28 particular with Dr. Charles?
14:35:41 1 A No.
14:35:45 2 Vail, Christians & Associates (619)544-8344 329
14:35:50 3 Q In your review of documents relating to
14:35:54 4 environmental tobacco smoke, the review that you did at or
14:36:01 5 about the time that you took over that particular area in
14:36:04 6 the company, did you find any documents that were earlier
14:36:08 7 than this document that specifically discussed the issue
14:36:14 8 of sidestream smoke and the potential influence on
nonsmokers as is described on page 3 of this document?
A Yes.

14:36:14 9 MR. STONE: Objection --
14:36:15 10 THE WITNESS: I'm sorry.
14:36:17 11 MR. STONE: Objection; assumes facts not in
14:36:18 12 evidence, lacks foundation, no basis for reference to the
14:36:23 13 document which is not admissible and to which there has
14:36:26 14 been no showing of authenticity.
14:36:30 15 You can answer.
14:36:31 16 THE WITNESS: Yes. I mean, well, the list we
14:36:34 17 went through on the Philip Morris website lists
14:36:39 18 Dr. Hirayama's work, which was published in '81, on
14:36:43 19 environmental tobacco smoke.
14:36:45 20 BY MR. McGUIRE:
14:36:45 21 Q And you agree with Dr. Charles' statement
14:37:09 22 that cigarette smoke is biologically active?
14:37:12 23 MR. STONE: Objection; lacks foundation, is
14:37:15 24 taken out of context, hearsay. It's an improper use of a
14:37:19 25 document which is not otherwise admissible, vague and
14:37:22 26 ambiguous, improperly calls for opinion testimony.
14:37:24 27 You can answer.
14:37:25 28 THE WITNESS: Myself and other scientists
14:37:27 1 Vail, Christians & Associates (619)544-8344 330
14:37:31 2 within Philip Morris, as well as other scientists outside
14:37:37 3 the company, this is something that's been known for quite
14:37:42 4 a long time. So I agree with it, and we use that phrase.
14:37:45 5 Other people use that phrase as well, outside of Philip
14:37:46 6 Morris, outside of the industry.
BY MR. McGUIRE:
14:37:46 7 Q And as of 1982, Philip Morris knew very
14:37:50 8 little about the biological activity of sidestream smoke,
14:37:54 9 correct?
14:37:55 10 MR. STONE: Objection; vague and ambiguous
14:37:56 11 with respect to the phrase "very little," lacks
14:37:59 12 foundation, improperly calls for opinion testimony. This
14:38:02 13 witness doesn't have any basis or personal knowledge as to
14:38:05 14 what Philip Morris knew or didn't know in 1982.
14:38:07 15 You can answer as best you know.
14:38:09 16 THE WITNESS: I'm not sure exactly how to
14:38:11 17 answer a question that is -- that is so broad. But Philip
14:38:15 18 Morris had information, as did other people, as to some of
14:38:22 19 the physical and chemical nature -- some of the physical
14:38:26 20 and chemical aspects of the nature of tobacco smoke,
14:38:30 21 including sidestream smoke.
14:38:32 22 And in 1981, you had the Hirayama
14:38:36 23 publications out of -- out of Japan. So I would say
14:38:40 24 Philip -- Philip Morris had some understanding of the
14:38:43 25 chemistry and the physical attributes of sidestream. And
14:38:48 26 based on publications, had other information relating to
14:38:52 27 biological activity. In the case of Dr. Hirayama, it
14:38:58 28 would be in humans.
14:38:59 1 Vail, Christians & Associates (619)544-8344 331
BY MR. McGUIRE:
14:38:59 2 Q Well, certainly, Dr. Charles would know about
14:39:01 3 those things, wouldn't he, as of 1982?
14:39:04 4 MR. STONE: Objection; argumentative, lacks
14:39:05 5 foundation, calls for speculation.
14:39:06 6 THE WITNESS: In 1982, it was Mr. Charles.
14:39:09 7 BY MR. McGUIRE:
14:39:09 8 Q I'm sorry. Mr. Charles.
14:39:10 9 MR. STONE: Same objections.
14:39:11 10 Do you have the question in mind, or did you
14:40:01 11 answer it?
14:40:01 12 MR. McGUIRE: He didn't answer it.
14:40:03 13 THE WITNESS: Oh. I'm sorry. I thought I

14:40:05 14 did.
14:40:05 15 BY MR. McGUIRE:
14:40:05 16 Q I'm sorry.
14:40:07 17 Dr. Charles, he would know about these things
14:40:10 18 that you mentioned, Dr. Hirayama's work, et cetera,
14:40:13 19 et cetera?
14:40:13 20 A Oh, I'm sorry.
14:40:14 21 MR. STONE: Subject to my prior objections.
14:40:16 22 THE WITNESS: He might have.
14:40:17 23 BY MR. McGUIRE:
14:40:17 24 Q Okay. Do you know why he says in this memo
14:40:19 25 "We know very little about the biological activity of
14:40:22 26 sidestream smoke"?
14:40:23 27 MR. STONE: Objection; lacks foundation,
14:40:25 28 calls for speculation, no personal knowledge. The
Vail, Christians & Associates (619)544-8344 332
14:40:27 1 document is inadmissible.
14:40:29 2 THE WITNESS: I don't know. I've never
14:40:32 3 spoken to Jim about this.
14:40:33 4 BY MR. McGUIRE:
14:40:33 5 Q When he said "we," did you understand he was
14:40:35 6 talking about Philip Morris?
14:40:37 7 MR. STONE: Same objections. Argumentative
14:40:38 8 as well.
14:40:39 9 THE WITNESS: I mean, that's one -- one way
14:40:40 10 to read this. But I don't -- I don't -- I don't know.
14:40:43 11 BY MR. McGUIRE:
14:40:43 12 Q Was it -- is it Dr. Hirayama?
14:40:55 13 A Yes.
14:40:56 14 Q Was it Dr. Hirayama's work that Mr. Charles
14:41:02 15 described as being the "scientific basis for the
14:41:07 16 statements were not sound, nevertheless, the damage is
14:41:10 17 done," on page 3?
14:41:12 18 MR. STONE: Lacks foundation, calls for
14:41:13 19 speculation, lacks personal knowledge, improper use of a
14:41:20 20 document which is not admissible.
14:41:22 21 THE WITNESS: Can you point me to --
14:41:23 22 BY MR. McGUIRE:
14:41:23 23 Q It's the one, two, three, four, five -- six
14:41:29 24 lines from the bottom.
14:41:34 25 A Where it says "the issue of sidestream"?
14:41:37 26 Q No. The one that says, "and even though the
14:41:40 27 scientific basis for the statements were not sound,
14:41:43 28 nevertheless, the damage is done," period.
Vail, Christians & Associates (619)544-8344 333
14:41:45 1 A I don't know what --
14:41:47 2 MR. STONE: Same objections.
14:41:49 3 THE WITNESS: Yeah, I don't know what the
14:41:50 4 basis for this statement is.
14:41:52 5 MR. McGUIRE: Let's go to 4026 for
14:42:06 6 identification, a memorandum from Helmut Wakeham to C.H.
14:42:17 7 Goldsmith dated April 7, 1970.
14:42:24 8 THE WITNESS: What's the Bates number?
14:42:26 9 C70-04536?
14:42:30 10 MR. McGUIRE: Yes.
14:42:32 11 THE WITNESS: And that's 4026?
14:42:34 12 MR. McGUIRE: Yes, sir.
14:42:35 13 (Exhibit 4026 was marked for identification.)
14:42:35 14 BY MR. McGUIRE:
14:42:35 15 Q Okay. This document relates to the purchase
14:42:38 16 of INBIFO by Philip Morris.
14:42:47 17 And do you know whether Philip Morris
14:42:49 18 purchased INBIFO so that they could respond to the

14:42:57 19 objection from Lorillard that they were conducting animal
14:43:01 20 studies in the United States at their facilities in
14:43:05 21 violation of the gentleman's agreement?
14:43:07 22 MR. STONE: Objection; assumes facts not in
14:43:08 23 evidence, argumentative, compound, lacks foundation with
14:43:13 24 respect to this witness's personal knowledge, calls for
14:43:17 25 speculation. It's certainly outside the scope of this
14:43:22 26 witness's designated testimony as well.
14:43:25 27 BY MR. McGUIRE:
14:43:25 28 Q If you don't know, you can tell me you don't
Vail, Christians & Associates (619)544-8344 334
14:43:28 1 know.
14:43:29 2 A I don't know.
14:43:30 3 Q Did you ever meet Dr. Hackenberg?
14:43:35 4 A Absolutely, yes.
14:43:36 5 Q Is he a jack of all sciences?
14:43:38 6 A He's a physician --
14:43:39 7 MR. STONE: Objection; vague and
14:43:40 8 ambiguous.
14:43:40 9 But you can answer.
14:43:41 10 THE WITNESS: Sorry.
14:43:42 11 He's a physician, very talented and creative
14:43:47 12 scientist. I don't know if I would describe him as a jack
14:43:52 13 of whatever, but a very talented gentleman.
14:43:58 14 BY MR. McGUIRE:
14:43:58 15 Q Do you know why Dr. Wakeham described him as
14:44:02 16 a jack of all sciences?
14:44:04 17 MR. STONE: Objection; assumes facts not in
14:44:10 18 evidence, lacks foundation, improper use of a document
14:44:13 19 that is not admissible, including because there's no
14:44:17 20 foundation for it.
14:44:18 21 THE WITNESS: My answer is, no, I don't know
14:44:21 22 why Dr. Wakeham referred to him that way, other than to
14:44:26 23 say that he's a very talented -- is a very talented
14:44:32 24 individual.
14:44:32 25 BY MR. McGUIRE:
14:44:32 26 Q The -- have you seen, at the offices of
14:44:40 27 Philip Morris USA, interoffice correspondence that appears
14:44:45 28 identical to this copy?
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14:44:48 1 A No, sir.
14:44:49 2 Q Do you know whether this type of interoffice
14:44:53 3 correspondence existed and was used by Philip Morris on or
14:44:58 4 about the date of this document?
14:45:02 5 MR. STONE: Objection; lacks personal
14:45:04 6 knowledge, no foundation, calls for speculation, vague and
14:45:06 7 ambiguous with respect to the term "type of interoffice
14:45:09 8 correspondence."
14:45:11 9 THE WITNESS: I don't know.
14:45:11 10 BY MR. McGUIRE:
14:45:11 11 Q Can you recognize Dr. Wakeham's signature at
14:45:19 12 the bottom of the page?
14:45:21 13 A No, I -- no, I can't.
14:45:23 14 Q Did you ever discuss this document with
14:45:28 15 Dr. Wakeham?
14:45:28 16 A I've met Dr. Wakeham twice over the period
14:45:33 17 that I was employed and as a consultant, and it was to --
14:45:41 18 I was introduced to him, said hello. He said hello. I
14:45:45 19 said goodbye, and that was it. I did not see this
14:45:52 20 document during the normal course of my employment at
14:45:54 21 Philip Morris.
14:45:55 22 Q You did do some type of historical search
14:46:04 23 when you took over your job, right, going backwards,

14:46:07 24 touching, reading the documents, discussing things with
14:46:10 25 the people that wrote the documents? Isn't that true?
14:46:14 26 A The -- the question you're asking me, the
14:46:17 27 answer is that relates to scientific -- scientific
14:46:22 28 questions, scientific documents. I did not go back and
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14:46:30 1 look at business -- business documents or business type --
14:46:33 2 type documents.
14:46:33 3 Q When you did your scientific -- well, Helmut
14:46:39 4 Wakeham was a scientist at Philip Morris for several
14:46:42 5 years, wasn't he?
14:46:44 6 A He was the head of research and development.
14:46:46 7 Q And in your search, didn't you run across his
14:46:50 8 signature at least a dozen times?
14:46:52 9 A Not at INBIFO.
14:46:54 10 Q I don't care where it was.
14:46:55 11 Did you run across his signature on original
14:46:57 12 documents, based on your scientific search, at least a
14:47:00 13 dozen times?
14:47:02 14 A I probably did. I have to tell you, I didn't
14:47:05 15 pay enormous attention to it.
14:47:06 16 Q Okay.
14:47:08 17 A I don't know why I would.
14:47:09 18 Q Let's go to the document also authored by
14:47:50 19 Dr. Wakeham, December 8, 1970. It would be Exhibit 4027
14:47:58 20 for identification.
14:47:58 21 (Exhibit 4027 was marked for identification.)
14:48:00 22 BY MR. McGUIRE:
14:48:00 23 Q The CTR is the Council for Tobacco Research;
14:48:17 24 is that right?
14:48:18 25 MR. STONE: Objection. The question -- oh, I
14:48:21 26 see. I see what you meant. No objection. Sorry.
14:48:26 27 THE WITNESS: As it relates to this memo,
14:48:29 28 that's correct.
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14:48:29 1 BY MR. McGUIRE:
14:48:29 2 Q And J.F. Cullman, III, is he a former CEO of
14:48:34 3 Philip Morris tobacco -- excuse me -- Philip Morris USA?
14:48:38 4 A Philip Morris Companies.
14:48:40 5 Q Philip Morris Companies?
14:48:41 6 A Yes.
14:48:42 7 Q Was there ever a Philip Morris Tobacco
14:48:44 8 Company, as far as you know?
14:48:46 9 A Not that I'm aware of.
14:48:47 10 Q And the Philip Morris Companies, are they --
14:48:50 11 is that the holding company for Philip Morris USA? And I
14:48:56 12 don't mean any legal significance to holding company.
14:48:58 13 MR. STONE: Objection; lacks foundation,
14:49:00 14 outside this witness's area of either designation or
14:49:04 15 experience.
You can answer based on whatever you do know
14:49:04 16 or think.
14:49:07 18 THE WITNESS: I believe so.
14:49:07 19 BY MR. McGUIRE:
14:49:07 20 Q Okay. Dr. Wakeham says the following to --
14:49:17 21 would you say Mr. Cullman was the senior guy at the
14:49:20 22 company?
A Chairman.
14:49:21 23 Q Chairman.
14:49:21 24 So that's the top guy?
14:49:22 25 A Yes.
14:49:24 26 Q He says, "Let's face it. We're publicly
14:49:25 27 and" -- excuse me. "Let's face it. We are interested in
14:49:27 28

14:49:30 1 evidence which we believe denies the allegation that
14:49:33 2 cigarette smoking causes disease."

A Where are you, if I might?

Q One, two, three, four five -- the paragraph
14:49:41 5 that starts with No. 2.

A Uh-huh.

Q Three or four lines down. You can read the
14:49:48 8 whole paragraph to put it in context.

A This is not Mr. Cullman.

MR. STONE: Wait for a question.

THE WITNESS: I'm sorry.

BY MR. McGUIRE:

Q This is Helmut Wakeham, the senior scientist,
14:49:59 14 talking to the senior operator, telling him, let's face
14:50:02 15 it, we're not interested in anything but exculpatory
14:50:06 16 evidence?

MR. STONE: Is that a question?

MR. McGUIRE: No.

MR. STONE: Okay. You were just talking?

MR. McGUIRE: Just talking.

MR. STONE: Okay. Move to strike counsel
14:50:17 22 just talking.

BY MR. McGUIRE:

Q Have you had a chance to read that?

A Yes.

Q Is it -- do you believe that that correctly
14:50:21 26 outlines the objective of the R&D Department for Philip
14:50:26 27 Morris as of the time that this document was written?

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MR. STONE: Objection; lacks foundation.

This witness was not employed at Philip Morris in 1970.
The question calls for speculation. It's an improper use
of a document which is not otherwise admissible. Outside
the area on which this witness has been designated to
testify. Outside the scope of any of the issues in this
case and not reasonably calculated to lead to the
discovery of admissible evidence. Clearly an abuse of the
deposition process and your notice of deposition.

You can answer, if you know.

MR. MILES: Also vague as worded.

THE WITNESS: I can't speak to the context or
14:51:05 12 the content or the meaning of what is written here by
14:51:06 13 Dr. Wakeham in 1970 to Mr. Cullman.

BY MR. McGUIRE:

Q Do you agree that the task of proving that
14:51:14 16 cigarette smoking does not cause disease is extremely
14:51:21 17 difficult?

MR. STONE: Same objections and improper use
14:51:25 19 of the document which is inadmissible, and it's outside
14:51:28 20 the scope of this witness's designation and outside the
14:51:34 21 scope of the issues in this case which relate to ETS.
14:51:36 22 It's also asked and answered yesterday in discussions of
14:51:41 23 the null hypothesis.

You can answer it.

THE WITNESS: It is true that one cannot
14:51:53 27 prove a negative.

BY MR. McGUIRE:

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Q Are you saying it's impossible?

MR. STONE: Objections as previously stated.
14:52:05 3 Also argumentative.

THE WITNESS: I think both scientifically and

14:52:13 5 philosophically, it would seem to be impossible, but I
14:52:18 6 have -- I have learned that it may be, as he
14:52:31 7 says, extremely difficult, if that comes close to being
14:52:38 8 impossible as one can get.
14:52:39 9

BY MR. McGUIRE:

14:52:39 10 Q Do you agree if, in fact, the tobacco
14:52:42 11 industry was able to prove a negative in 30 years
14:52:45 12 regarding cigarette smoking, that they could do the same
14:52:47 13 thing regarding environmental tobacco smoke?

14:52:50 14 MR. STONE: Same objections. Also vague and
14:52:53 15 ambiguous and compound, assumes facts not in evidence.

14:52:56 16 THE WITNESS: As far as I know, they haven't
14:52:59 17 with regard to mainstream smoke.

14:53:05 18 And it probably holds true for environmental
14:53:13 19 tobacco smoke, but at least in terms of the time I was
14:53:16 20 with the company, this was not a motivational driver for
14:53:22 21 what we were doing.

14:53:24 22 BY MR. McGUIRE:

14:53:24 23 Q How much of the -- in your estimation, how
14:53:31 24 much of the research that has been funded by Philip Morris
14:53:34 25 into ETS has been devoted to getting Philip Morris, quote,
14:53:39 26 off the hook, close quote, as that term is used by
14:53:42 27 Dr. Wakeham on Rational No. 2 on the second page?

14:53:46 28 MR. STONE: Object. It lacks foundation.

14:53:48 1 Vail, Christians & Associates (619)544-8344 341
14:53:51 2 This witness wouldn't know how Mr. Wakeham was using the
14:53:54 3 words. Calls for speculation. It's an improper use of a
14:53:57 4 document, which is inadmissible. Vague and ambiguous.
14:54:01 5 It's argumentative, and it assumes facts not in evidence.

14:54:03 6 THE WITNESS: Rational No. 2?

14:54:03 7 BY MR. McGUIRE:

14:54:04 8 Q Yes.

14:54:14 9 A As far as -- as far as I know, personally,
14:54:19 10 this was not any part of anything we were doing and/or
funding.

14:54:20 11 Q Has -- has the company ever adopted Option
14:54:35 12 B?

14:54:37 13 MR. STONE: Objection.

14:54:38 14 BY MR. McGUIRE:

14:54:38 15 Q -- as described by Dr. Wakeham further on
14:54:41 16 down that page --

14:54:43 17 MR. STONE: Objection; assumes facts not in
14:54:44 18 evidence, lacks foundation, calls for speculation,
14:54:46 19 improper use of an inadmissible document.

14:54:49 20 BY MR. McGUIRE:

14:54:49 21 Q -- as it relates to ETS?

14:54:52 22 A I've never had any interaction with CTR,
14:54:57 23 other than knowing two of the scientists on the outside
14:55:00 24 SAB before I came to Philip Morris. I know none of the
14:55:04 25 particulars. Though, I have seen lists of the scientists
14:55:08 26 that have gotten money in the publications that issued
14:55:12 27 forth. That's the level of my knowledge of CTR. So I
14:55:17 28 have no knowledge that would enable me to answer this

14:55:21 1 Vail, Christians & Associates (619)544-8344 342
14:55:23 2 question, as you have raised it to me.

14:55:28 3 Q Have you explored with any officer or
14:55:32 4 director -- any other officer or director of Philip Morris
14:55:38 5 the answer to the question posed by Dr. Wakeham, as
14:55:42 6 follows: "How long will it take for witnesses to acquire
14:55:46 7 the taint of industry money?"

14:55:47 8 MR. STONE: Objection; lacks foundation,
14:55:52 9 calls for speculation, improper use of an inadmissible
document, beyond the scope on which this witness has been

14:55:55 10 designated to testify, assumes facts not in evidence, argumentative.

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THE WITNESS: I haven't.

BY MR. McGUIRE:

Q Was the taint of industry money one of the criteria used when you dropped several scientists when you took over the ETS program?

A No.

MR. STONE: Objection; vague and ambiguous. You can answer.

THE WITNESS: No, sir. I gave you the reasons that -- at least two of the reasons, the main reasons why some people dropped off that list.

BY MR. McGUIRE:

Q Well, was the taint of industry one of the reasons you didn't give me?

MR. STONE: Same objections.

THE WITNESS: No.

BY MR. McGUIRE:

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Q Does Dr. Wakeham still live in Richmond?

A If not in Richmond, in the Richmond area.

Q Have you ever read any depositions or trial testimony about Dr. Wakeham?

A No.

Q Are you aware of -- are you aware of any psychosocial studies on the positive benefits of smoking?

MR. STONE: Objection; vague and ambiguous, outside the scope on which this witness has been designated to testify which I think relates to issues of ETS, not active smoking.

You can answer.

THE WITNESS: Actually, we talked about that earlier with the discussion of the ARISE program and Dr. Warburton.

BY MR. McGUIRE:

Q I thought that was psychophysiological. This is psychosocial.

MR. STONE: I think your word was psychophysiological. I don't think the witness adopted it earlier.

BY MR. McGUIRE:

Q Are you aware of psychophysiological studies that have been conduct by your company?

A Yes.

Q Okay. Now I want to talk about psychosocial ones.

Have you conducted any of those?

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A We conducted, no, not that I'm aware of.

Q There is a list of carbon copy people.

Are any of these individuals still working for the company, if you know?

A I don't believe so.

And by that, you mean as employees?

Q Well, no.

How about as consultants as well, with confidentiality agreements?

A Well, I don't know about the confidentiality agreements, but Mr. Goldsmith has appeared from time to time in Richmond to discuss some things with the operations people, including research and development. That's it.

14:59:14 15 Q Have you signed a confidentiality agreement
14:59:17 16 with the company?
14:59:19 17 A With my consulting agreement? Yes.
14:59:21 18 Q Yes.
14:59:22 19 A Yes.
14:59:22 20 Q Let's go to 4028 for identification, which
14:59:48 21 would be the Dunn October '77 Smoker Psychology Program
14:59:53 22 Review.
15:00:03 23 (Exhibit 4028 was marked for identification.)
15:00:03 24 BY MR. McGUIRE:
15:00:03 25 Q Do you know Mr. Dunn?
15:00:04 26 A No, I don't.
15:00:06 27 Q Have you reviewed this document in the past?
15:00:11 28 A Only as a result of litigation.
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15:00:13 1 Q Are any of the handwritten notes on this copy
15:00:20 2 of this document yours?
15:00:24 3 A I don't believe so, but I -- I don't think so.
15:00:28 4 Q Okay. This memorandum -- do you know whether
15:00:34 5 this memorandum was authored by Mr. Dunn or not?
15:00:37 6 MR. STONE: Objection; lacks foundation,
15:00:38 7 calls for speculation.
15:00:40 8 THE WITNESS: I don't know.
15:00:40 9 (Whereupon confidential proceedings
15:00:40 10 commenced, page 347.)
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15:00:40 1 (Confidential proceedings begin.)
15:00:40 2 BY MR. McGUIRE:
15:00:40 3 Q The statement is made here, "First, every
15:00:45 4 undertaking has to have some mission." And "I would state
15:00:48 5 our charter from Philip Morris in this fashion: "Study the
15:00:52 6 psychology of the smoker in search of information that can
15:00:55 7 increase corporate profits."
15:00:59 8 Has that charter been changed?
15:01:02 9 MR. STONE: Object to the improper use of a
15:01:04 10 document which is inadmissible and for which there is no
15:01:07 11 foundation, assumes facts not in evidence, lacks
15:01:10 12 foundation, calls for speculation, outside the scope on
15:01:12 13 which this witness has been designated to testify.
15:01:15 14 Outside the scope of any of the issues raised by the
15:01:17 15 notice of deposition.
15:01:19 16 MR. MILES: Also assumes facts.
15:01:21 17 Has this been marked "confidential" so that
15:01:26 18 we have to have people sign off on this?
15:01:29 19 MR. STONE: Now that you point it out, I see

15:01:31 20 that it does.
15:01:31 21 MR. McGUIRE: It is. I do too. So let's
15:01:33 22 just put this off to the side. He didn't answer the
15:01:37 23 question, did he?
15:01:38 24 MR. STONE: No. But I'll mark the portion of
15:01:38 25 the transcript "confidential" where the question is asked.
15:01:45 26 MR. McGUIRE: I quoted it. Yeah.
15:01:46 27 MR. STONE: Just put it off to one side.
15:01:46 28 (Confidential proceedings end.)
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15:01:46 1 MR. McGUIRE: This next one, although you
15:01:53 2 can't read it, looks to me like it says "Confidential."
15:01:56 3 The Panzer letter on the Roper proposal.
15:02:03 4 THE WITNESS: Do we put that off to one side?
15:02:05 5 MR. McGUIRE: Yes, sir. I'll mark it, but
15:02:09 6 just put it over somewhere.
15:02:11 7 THE WITNESS: And that's May 1st, 1972?
15:02:14 8 MR. McGUIRE: Yes.
15:02:15 9 MR. STONE: Yes. That's what it is.
15:02:16 10 (Exhibit 4029 marked for identification.)
15:02:22 11 BY MR. McGUIRE:
15:02:22 12 Q Let's talk about the September 22nd, 1959
15:02:50 13 Wakeham to Roper memorandum.
15:02:54 14 A That's the one that's an opinion on cigarette
15:02:57 15 smoking and cancer?
15:02:58 16 Q Yes.
15:02:59 17 A And we're going to call that 4030?
15:03:02 18 Q That would be great.
(Exhibit 4030 was marked for identification.)
15:03:06 20 BY MR. McGUIRE:
15:03:06 21 Q Have you seen this document before?
15:03:15 22 A If I have, it's only as a consequence of
15:03:18 23 litigation.
15:03:19 24 Q Doesn't this appear to be a blueprint to
15:03:28 25 exactly what the position is now some 41 years later on
15:03:34 26 ETS?
15:03:35 27 MR. STONE: Objection; lacks foundation,
15:03:36 28 calls for speculation, assumes facts not in evidence,
vague and ambiguous, improper use of a document for which
15:03:40 1 there's no foundation. And it's not admissible.
15:03:42 2 348
15:03:46 3 MR. STONE: Objection; lacks foundation,
15:03:49 4 calls for speculation, assumes facts not in evidence,
15:03:49 5 Vail, Christians & Associates (619)544-8344
15:03:50 6 vague and ambiguous, improper use of a document for which
15:03:51 7 there's no foundation. And it's not admissible.
15:03:53 8 THE WITNESS: Can you point me to --
15:03:57 9 BY MR. McGUIRE:
15:04:00 10 Q The whole document.
15:04:06 11 A Well --
15:04:11 12 Q As far as I see, this whole document is more
or less a blueprint, a 41-year preview. Although this is
on cigarette smoking and cancer, it seems to have the same
ring to it and arguments to it that I heard you make over
the last day and a half regarding ETS and cancer and
several other diseases.
15:04:13 13 Have you had a -- you did -- you've never
15:04:17 14 seen this before?
15:04:18 15 MR. STONE: Move to strike. Move to strike
15:04:23 16 counsel's closing argument in the form of colloquy.
15:04:26 17 MR. McGUIRE: Well, my colloquy is inviting
15:04:29 18 you to take a moment to read the letter and tell me
15:04:32 19 whether you agree with me or not.
15:04:33 20 THE WITNESS: Well, again, if I've seen this,
15:04:36 21 it's only as a result of litigation. To sit here and read
15:04:45 22 this and be able to answer questions intelligently would
15:04:50 23 take more than a few moments. If you'll allow me the time
15:04:57 24 to read it.

15:04:58 25 MR. MC GUIRE: Sure. I'll let you read it.
15:05:01 26 MR. STONE: Should we go off the record?
15:05:05 27 MR. MC GUIRE: That would probably be
15:05:07 28 prudent. I'll tell you what we'll do. We'll go off the
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15:05:10 1 record all at one time. Let's mark this, we did, as
15:05:13 2 4030. We'll go through the rest of the documents, because
15:05:16 3 there may be others that you want to read.
15:05:20 4 THE WITNESS: So I just put this aside?
15:05:23 5 MR. MC GUIRE: Yes, sir.
15:05:25 6 THE WITNESS: All right.
15:05:28 7 MR. MC GUIRE: The next document is really,
15:05:31 8 apparently, two documents added together. The first three
15:05:36 9 pages have to do with -- and this apparently was an
15:05:41 10 exhibit to some proceeding you were involved in. As I
15:05:45 11 see, Exhibit No. 1, Carchman, 10/23/97. "Response to
15:05:50 12 Questions about Additional Parameters of Addiction." And
15:05:52 13 then it goes on for three pages, including bullet
15:05:58 14 statement responses generated from Carchman's 4/11/94
15:06:03 15 meeting.
15:06:04 16 We had a previous earlier document this
15:06:07 17 morning or this afternoon that discussed you -- I'm
15:06:11 18 sorry. It wasn't you. It had to do with tar, not
15:06:15 19 addiction.
15:06:16 20 BY MR. MC GUIRE:
15:06:16 21 Q Didn't, at one point in time, you represent
15:06:18 22 the company in any proceedings with respect to the
15:06:21 23 company's position on addiction?
15:06:23 24 A I've been asked questions in litigation about
15:06:25 25 addiction.
15:06:26 26 Q Do you recognize the first three pages of
15:06:28 27 this document as being one that you -- well, the first two
15:06:35 28 pages, this Response to Questions about Additional
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15:06:41 1 Parameters of Addiction. We'll mark that as Exhibit 4031.
15:06:44 2 MR. STONE: The first two pages?
15:06:45 3 MR. MC GUIRE: The first two pages.
15:06:47 4 (Exhibit 4031 was marked for identification.)
15:06:49 5 BY MR. MC GUIRE:
15:06:49 6 Q And I'll ask you whether you've seen this
15:06:54 7 before.
15:06:54 8 A I may have. I mean, I've seen things with
15:07:04 9 these titles and these kind of words before, either in
15:07:08 10 documents, papers, or in textbooks.
15:07:10 11 Q Did you prepare this document?
15:07:11 12 A I don't know. Probably not.
15:07:13 13 Q Do you disagree with any of the statements
15:07:18 14 made in the document?
15:07:20 15 A I don't know.
15:07:20 16 MR. STONE: Objection; improperly calls for
15:07:22 17 opinion testimony, lacks foundation.
15:07:27 18 THE WITNESS: I would need to take a look at
15:07:29 19 it.
15:07:29 20 These two pages?
15:07:30 21 MR. MC GUIRE: Yes.
15:08:18 22 THE WITNESS: I would -- my only comment on
15:08:20 23 this is though what's in here appears to be true, it's
15:08:28 24 incomplete. There are additional things that have come
15:08:34 25 to -- come to light scientifically that I would -- if I
15:08:41 26 were involved in something like this, I would want to
15:08:45 27 add -- add to this, these two pages that's here.
15:08:49 28 BY MR. MC GUIRE:
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15:08:49 1 Q Well, for example, do you agree that because
15:08:57 2 the doses in studies were ten to a thousand times higher
15:09:04 3 than could be expected to be seen in humans, the relevance
15:09:08 4 of those findings should be questioned?

15:09:15 5 A I think that whether we're talking about
15:09:17 6 nicotine addiction or something else, that is an issue
15:09:21 7 that anybody who reads it who has a critical eye would
15:09:26 8 raise. I think that's a reasonable -- reasonable question
15:09:30 9 to raise.

15:09:30 10 Q Your studies with rats involve doses that are
15:09:37 11 up to a hundred times higher, right?

MR. STONE: Objection; vague and ambiguous.

THE WITNESS: If you mean by my study with
rats, you mean the work that was done in R&D?

BY MR. McGUIRE:

Q Yes, sir. I didn't mean you in particular.

A If you want to spend a moment talking about
that, I could sum up the work that was done with regard to
Dr. Denoble and Dr. Mele as being, at best, totally
derivative, since all of the work they were doing had been
done and published by others, using better and more
appropriate animal models than the ones that they were
using. It eludes me at this moment precisely what they
were doing with that particular aspect of their studies.

VIDEOGRAPHER: Excuse me. I need to do a
tape change.

MR. McGUIRE: Can you take a second, or right
now?

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VIDEOGRAPHER: One minute.

BY MR. McGUIRE:

Q Isn't this the same response that the CEOs
from tobacco gave to Congress when they all stood up and
said nicotine is not an addictive substance?

MR. STONE: Objection; lacks foundation,
calls for speculation, argumentative.

THE WITNESS: No.

MR. McGUIRE: Okay. You can do that now.

Thanks.

VIDEOGRAPHER: We are off the record. This
concludes Tape 2 of the deposition, and the time is 3:11.

(Discussion off the record.)

VIDEOGRAPHER: We are on the record. This
begins Tape 3 of the Volume II deposition of Richard
Carchman, and the time is 3:17.

(Exhibit 4032 was marked for identification.)

BY MR. McGUIRE:

Q Let's go to Exhibit 4032 for identification,
which is entitled "Bullet Statement Responses generated
from Carchman's 4/11/94 Meeting."

Do you recognize this document?

A No, I don't.

Q Do you have a recollection of either
attending or having a meeting on or about this date where
the subject matter of addiction was discussed?

A I don't.

Q Has your position on addiction changed since

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this document was authored?

MR. STONE: Objection; vague and ambiguous
with respect to when the document was authored, lacks
foundation, overbroad.

THE WITNESS: I don't -- I don't know where

15:18:04 6 this came from. 4/11/94, I may have been on medical leave.

15:18:22 7 BY MR. McGUIRE:

15:18:22 8 Q Does that mean you may not have as well?

15:18:33 9 A This -- this period of time, this is around
15:18:36 10 the time of the Waxman -- the Waxman hearings. I believe
15:18:42 11 I was in the hospital. But I would have to go back and
15:18:45 12 look.

15:18:45 13 In any event, this is consistent with the
15:18:48 14 time frame I was on medical leave. Where this document
15:18:53 15 came from, I don't know. And it says "from Carchman's
15:19:01 16 Meeting." And this doesn't necessarily represent what
15:19:06 17 Carchman is saying, as this is some sort of representation
15:19:10 18 of some meeting that occurred, according to this, I
15:19:15 19 believe, on the 11th of April 1994.

15:19:18 20 Q I believe, at least my memory is, when I
15:19:27 21 asked you a question about whether either nicotine or
15:19:30 22 cigarette smoking was addictive yesterday, you said, yes,
15:19:33 23 it was.

15:19:33 24 A What I said was as the term is commonly
15:19:37 25 used. And I think the question was cigarette smoking, and
15:19:41 26 not nicotine.

15:19:41 27 Q Okay. And if I make the question nicotine,
15:19:46 28 does that change your answer?

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15:19:48 1 A I don't know the answer to whether nicotine
15:19:51 2 is -- nicotine is addicting.

15:19:52 3 Q Did you at one time take the position that
15:19:55 4 nicotine was not addictive?

15:19:57 5 A If I took a position, it probably was that I
15:20:03 6 didn't know whether it was or wasn't addictive.

15:20:06 7 Q Okay. Did you ever take a position that
15:20:08 8 cigarette smoking wasn't addictive?

15:20:11 9 A I think I -- I concluded -- in fact, I have
15:20:19 10 stated in previous testimony that for some individuals,
15:20:26 11 it's very hard to stop smoking. And for some individuals,
15:20:31 12 it may even be related to nicotine. Though, there are
15:20:34 13 clearly other factors. And my own personal view was that
15:20:39 14 for some of those individuals, they may -- may be viewed
15:20:42 15 as being addicted.

15:20:44 16 Q Does Philip Morris agree today that cigarette
15:20:47 17 smoking is addictive?

15:20:49 18 MR. STONE: Objection; asked and answered
15:20:50 19 yesterday.

15:20:50 20 THE WITNESS: As the term is commonly used, yes.

15:20:53 21 BY MR. McGUIRE:

15:20:53 22 Q Define for me what you mean is the common
15:20:57 23 definition of, quote, addictive, close quote?

15:21:01 24 A Repetitive -- repetitive behavior in light of
15:21:08 25 awareness of harm that would be associated with the
15:21:14 26 continued use or that continued behavior.

15:21:23 27 MR. McGUIRE: Okay. Now, this would be a
15:21:24 28 good time -- we just didn't get it to work out right, in

15:21:28 1 Vail, Christians & Associates (619)544-8344
15:21:32 2 terms of confidential and nonconfidential. Let me see if
15:21:34 3 there's anything else I can do before we get to
15:21:35 4 confidential documents.

15:21:35 4 MR. STONE: Dr. Carchman, the videographer
15:21:54 5 wants you to slide to your left.

15:21:55 6 MR. McGUIRE: There are a couple of areas of
15:22:16 7 previous testimony. You can take that. I'll give this to
15:22:20 8 your attorney. I want to ask you about it. I don't know
15:22:32 9 if I have three copies. I may just have two.

15:22:35 10 BY MR. McGUIRE:

15:22:35 11 Q This is testimony that you gave in the Dunn
15:22:42 12 and Wiley case in March of 1998. I'd like to draw your
15:22:51 13 attention to your testimony on page 7693, line 4.
15:23:00 14 "Is there a question?
15:23:02 15 "Question: My question is: Don't you know
15:23:04 16 that the company that you're with has taken the position
15:23:06 17 that there is a scientific controversy about environmental
15:23:11 18 tobacco smoke and this ability to cause lung cancer in
15:23:13 19 nonsmokers?"
15:23:15 20 Your answer was on page (sic) 11.
15:23:16 21 Was that your answer at the time?
15:23:17 22 A Yes.
15:23:19 23 Q Testimony at page 7706, "Question: Have you
15:23:24 24 ever seen" --
15:23:24 25 A Hold on.
15:23:25 26 Q I'm sorry. I don't have that.
15:23:28 27 What's the next page that you have?
15:23:29 28 A 7711.
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15:23:31 1 Q Okay. "Question: Does Philip Morris" --
15:23:33 2 MR. MILES: Can you hold off. Okay. There's
15:23:35 3 one copy down here that we're trying to read, okay, which
15:23:39 4 we have not had a chance to look at.
15:23:42 5 You only gave us one copy, right, for all
15:23:44 6 three of us?
15:23:45 7 MR. MC GUIRE: I gave you what I had. One,
15:23:48 8 two -- I thought I had four copies. But I guess I only
15:23:51 9 had one.
15:23:52 10 MR. MILES: All right. You'll have to wait
15:23:54 11 until we have a chance to take a look at what it is you're
15:23:56 12 referring to.
15:23:57 13 What page are you at now?
15:23:58 14 MR. MC GUIRE: I think 7711; is that right?
15:24:03 15 THE WITNESS: That's the next page I have.
15:24:05 16 MR. MC GUIRE: Lines 11 through 23.
15:24:16 17 THE WITNESS: 11 through 23?
15:24:18 18 MR. MC GUIRE: Yes.
15:24:19 19 THE WITNESS: Yes.
15:24:20 20 MR. MILES: Okay. Go ahead.
15:24:21 21 BY MR. MC GUIRE:
15:24:21 22 Q The question was: "Does Philip Morris accept
15:24:24 23 the fact, as reported here, that little children who have
15:24:28 24 asthma are affected by ETS?"
15:24:30 25 Was that your answer?
15:24:31 26 A Yes.
15:24:31 27 MR. STONE: That wasn't even the question.
15:24:36 28 MR. MILES: You didn't read it correctly, Counsel.
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15:24:39 1 BY MR. MC GUIRE:
15:24:41 2 Q "Question: And, Doctor, does Philip Morris
15:24:45 3 accept or dispute the fact, as reported here, that little
15:24:48 4 children who have asthma are affected by ETS?"
15:24:51 5 Is that your answer on line 15?
15:24:54 6 MR. STONE: Lacks foundation that the
15:24:56 7 witness would remember whether or not this was his
15:24:57 8 testimony.
15:24:59 9 If you do remember whether it was your
15:25:00 10 testimony, you can say whether it was or wasn't.
15:25:02 11 If you don't recall, the court allows
15:25:05 12 Mr. McGuire various options for how to handle prior
15:25:09 13 testimony.
15:25:09 14 I would object to the use of this exhibit on
15:25:11 15 the ground that it's incomplete. It doesn't even include

15:25:16 16 all of the testimony bearing directly on the subject
15:25:19 17 matter.

15:25:19 18 You can answer as best you recall.
15:25:21 19 THE WITNESS: It could have. I don't recall
15:25:23 20 with any certainty.

15:25:25 21 BY MR. McGUIRE:

15:25:25 22 Q Next question: "So you would agree, then,
15:25:29 23 that there are children in America who are adversely
15:25:31 24 affected by secondhand smoke?"

15:25:33 25 Is that your answer on line 23?
15:25:36 26 MR. STONE: Same objections.
15:25:38 27 MR. MILES: I'm going to object to the form
15:25:42 28 of the question as incorporating a question that is,
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itself, objectionable. It assumes facts.

15:25:46 1 THE WITNESS: Again, my same answer as before.
15:25:53 2 BY MR. McGUIRE:

15:25:55 3 Q And if you go to page -- the next page, 7712,
15:26:01 5 continues the question, "But does your company accept that
15:26:03 6 there are children in America who are adversely health
15:26:06 7 affected by secondhand smoke?"

15:26:09 8 Is that your answer at line 4?
15:26:12 9 MR. STONE: Objection.
15:26:12 10 MR. MILES: Counsel, hang on a second.
15:26:14 11 Can you designate page and line so we have an
15:26:17 12 opportunity to look at the question before you --
15:26:19 13 MR. McGUIRE: I did.
15:26:20 14 MR. MILES: No, you didn't do it. You didn't
15:26:22 15 give us a beginning line and an ending line. If you did,
15:26:24 16 I didn't hear it. I think you just said go to the next
15:26:27 17 page.
15:26:28 18 So if you can give us an opportunity before
15:26:30 19 you read the question to the witness for us to make any
15:26:32 20 objections that we may feel are appropriate, we'd
15:26:35 21 appreciate it. That's how you do it in a courtroom.
15:26:37 22 Okay. We ask you that here, okay, since you are
15:26:41 23 videotaping it.
15:26:41 24 So what page and lines are you intending to
15:26:45 25 read to the witness?
15:26:46 26 MR. McGUIRE: 1 through 4.
15:26:47 27 MR. MILES: Thank you.
15:26:48 28 MR. STONE: Object to the question on the
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15:26:52 1 grounds it's an improper use of prior testimony, if indeed
15:26:54 2 that's what it is. Lacks foundation, is improper to form,
15:26:57 3 assumes facts not in evidence.
15:26:59 4 You can answer as best you recall, if you
15:27:03 5 were asked that question, if that's the answer you gave, I
15:27:06 6 guess back about two years ago.
15:27:08 7 THE WITNESS: Yeah, a little over two years
15:27:09 8 ago.
15:27:10 9 MR. MILES: Okay. You can go ahead,
15:27:12 10 Counsel. Thank you.
15:27:13 11 MR. McGUIRE: Thank you.
15:27:14 12 THE WITNESS: This could have been my -- my
15:27:17 13 answer. It wouldn't surprise me.
15:27:18 14 BY MR. McGUIRE:
15:27:18 15 Q Would you answer this question -- question
15:27:22 16 differently today?
15:27:24 17 A What, that there --
15:27:25 18 MR. STONE: Object to the form of the
15:27:26 19 question on the grounds previously stated.
15:27:28 20 THE WITNESS: -- that there might be some

15:27:29 21 children that are affected?
15:27:30 22 BY MR. MCGUIRE:
15:27:30 23 Q No. That there are. Not that there might
15:27:33 24 be. That there are, without equivocation at all.
15:27:39 25 A I would say, as I said yesterday, there are
15:27:42 26 some children that would be affected.
15:27:44 27 Q That's why I'm asking you this, because this
15:27:46 28 is a little bit of a different answer than the other day.
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15:27:48 1 A Okay.
15:27:49 2 Q What has happened since March of 1998 and
15:27:53 3 today on this particular question that has influenced your
15:27:56 4 response?
15:27:56 5 A Yeah. That's a very important question.
15:28:00 6 Since that time, through the Center for Indoor Air
15:28:05 7 Research, we funded a large series of studies involving
15:28:11 8 human subjects with asthma, and some of them had
15:28:16 9 self-reported sensitivity to tobacco smoke.
15:28:18 10 In addition, the center sponsored a meeting
15:28:23 11 in Jackson Hole with probably some of the most prominent
15:28:29 12 asthma scientists and physicians involved in ETS
15:28:32 13 research. And that meeting resulted in a monograph that
15:28:37 14 was published after this, Dr. Tom Platts-Mills edited it
15:28:46 15 from the University of Virginia, in Charlottesville. And
15:28:51 16 in that, in that monograph and in the studies reported in
15:28:55 17 there, just focusing for a moment on the work of Lehrer
15:29:00 18 out of Tulane down in Louisiana, it became apparent to
15:29:04 19 myself, Dr. Sanders, and Dr. Demsy, that what I had said
15:29:11 20 in '98 based upon this recent scientific evaluation needed
15:29:17 21 to -- needed to change.
15:29:19 22 And based upon that, I think what you see in
15:29:21 23 the website, the Philip Morris website today is, in part,
15:29:27 24 a consequence of that research that the center funded, the
15:29:33 25 monograph that the center supported and published, and
15:29:36 26 some presentations that Ted and Ruth and I made to
15:29:42 27 management in New York.
15:29:43 28 Q Had you received any manuscripts or -- we'll
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15:29:57 1 call them manuscripts, prepublication manuscripts of this
15:30:01 2 work?
15:30:02 3 A No.
15:30:02 4 Q Did you know the work was ongoing at the time
15:30:05 5 that you were testifying?
15:30:09 6 MR. STONE: Objection; vague and ambiguous.
15:30:10 7 But you can answer.
15:30:12 8 THE WITNESS: I knew the Lehrer work was
15:30:15 9 ongoing because that was reviewed scientifically. I knew
15:30:20 10 that the monograph was going to happen because we funded
15:30:26 11 the meeting that was going to take place in Jackson --
15:30:29 12 Jackson Hole.
15:30:30 13 But, again, the lack of omniscience on my
15:30:34 14 part or anyone else's part in the company and being able
15:30:37 15 to predict an outcome from an investigation before the
15:30:40 16 investigation is complete, I would say we were lacking in
15:30:43 17 that -- in that area.
15:30:44 18 BY MR. MCGUIRE:
15:30:44 19 Q What's the next page that you have?
15:30:49 20 A 7626.
15:30:52 21 Q Would you read the testimony from lines 1
15:31:03 22 through 11.
15:31:05 23 A To myself?
15:31:06 24 Q Yes.
15:31:07 25 MR. STONE: Object. It's an improper use of

15:31:11 26 the transcript, taken out of context. And it's
15:31:13 27 incomplete. I ask that the witness be afforded the
15:31:16 28 opportunity to read all of the testimony bearing on this
Vail, Christians & Associates (619)544-8344 362
15:31:19 1 subject matter.

15:31:32 2 THE WITNESS: 1 through 11?

15:31:34 3 BY MR. McGUIRE:

15:31:34 4 Q Yes.

15:31:35 5 A Or 1 through 10?

15:31:36 6 Q 1 through 11.

15:31:37 7 A 1 through 11. Okay.

15:31:39 8 Q Were those the questions you were asked and
15:31:42 9 were those the questions you gave?

15:31:43 10 MR. STONE: Objection; lacks foundation,
15:31:45 11 calls for speculation on the part of the witness in order
15:31:47 12 to recall whether this transcript accurately reflects what
15:31:50 13 happened more than two years ago.

15:31:52 14 MR. RICHARDSON: I also object on the basis
15:31:54 15 that the subject matter of the questions and question
15:31:56 16 relate to topics that are not germane to this action.

15:32:03 17 THE WITNESS: If this is from the Wiley-Dunn
15:32:07 18 case and this is indeed my examination on cross, I
15:32:13 19 wouldn't be surprised that these were my answers. But as
15:32:15 20 I sit here today, I can't tell you without looking at the
15:32:18 21 entire document whether it was or it wasn't. I don't
15:32:21 22 remember.

15:32:23 23 BY MR. McGUIRE:

15:32:26 24 Q Have any governments required you to put an
15:32:29 25 ETS warning on your cigarettes, packages?

15:32:32 26 A That's generally outside of my area, but I'm
15:32:35 27 aware of that at least in some places, the answer is yes.

15:32:39 28 Q What governments?

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15:32:40 1 A For instance, in France.

15:32:41 2 Q Any other governments?

15:32:44 3 A Yes, there are. But as I sit here -- there
15:32:46 4 are several other governments. As I sit here today, I
15:32:49 5 can't tell you with a degree of accuracy I would be
15:32:53 6 comfortable with.

15:32:54 7 Q Does the warning in France say, if
15:32:57 8 translated, environmental tobacco smoke causes cancer?

15:33:00 9 A I don't remember.

15:33:01 10 Q Okay. What other pages do you have there?

15:33:04 11 A That's it.

15:33:04 12 Q That's the last?

15:33:11 13 Sure, we'll make it an exhibit. 4033 for
15:33:15 14 identification.

(Exhibit 4033 was marked for identification.)

15:33:16 15 THE WITNESS: Do we have a clip, because
15:33:22 16 these are loose.

15:33:24 17 MR. STONE: Can I get that stapler too.

15:33:25 18 MR. McGUIRE: Okay. At this point in time,
15:33:29 19 we should take a brief break, get copies of the
15:33:31 20 confidentiality agreement. I'm very concerned now that
15:33:36 21 counsel has left the room without signing this
15:33:42 22 confidentiality agreement, on his way back to New York.
15:33:44 23 He obviously heard some of the confidential information.
15:33:47 24 And he didn't sign the agreement.

15:33:51 25 MR. STONE: Well, I don't think there's any
15:33:52 26 reason to be concerned, because he appeared here on behalf
15:33:54 27 of Philip Morris, and it's a Philip Morris document. We
15:33:56 28 Vail, Christians & Associates (619)544-8344 364
15:34:00 1 don't require our own counsel to sign confidentiality

15:34:03 2 agreements.

15:34:03 3 MR. McGUIRE: I know. But we're not talking
15:34:04 4 about what you require. We're talking about what the
15:34:08 5 judge required. He said all attorneys. So, anyway, let's
15:34:10 6 go off the record. And we'll put another tape in that
15:34:14 7 we'll designate as confidential, if that's okay with
15:34:19 8 everybody. Then we'll go right back on the record.

15:34:22 9 VIDEOGRAPHER: We are off the record. And
15:34:26 10 the time is 3:35.

15:34:28 11 (Recess.)

15:59:45 12 (Whereupon confidential proceedings
15:59:45 13 commenced, pages 366 to 411.)

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15:59:45 1 (Confidential proceedings begin.)

15:59:45 2 VIDEOGRAPHER: We are back on the record.

16:00:32 3 The time is 4:01.

16:00:34 4 BY MR. McGUIRE:

16:00:34 5 Q Exhibit 4024 for identification is entitled
16:00:45 6 "Tobacco and Health R&D Approach," and it's apparently
16:00:49 7 dated November 15, 1961.

16:00:51 8 Is this a document that you reviewed the
16:00:57 9 original of during the period of time that you were going
16:01:00 10 back and getting up to speed on scientific issues in the
16:01:04 11 R&D Department when you joined the company?

16:01:07 12 MR. STONE: Object that this is an incomplete
16:01:09 13 document. There's no authentication for it.

16:01:11 14 You can go ahead and answer as best you know.

16:01:15 15 THE WITNESS: I have reviewed a document
16:01:21 16 like this in normal course of my business with regard to
16:01:25 17 my scientific review, yes. It looks very much like this,
16:01:28 18 if it's not identical to this.

16:01:30 19 BY MR. McGUIRE:

16:01:30 20 Q What was the purpose of reviewing this
16:01:32 21 document?

16:01:33 22 A This document is, in essence, a template for
16:01:45 23 what Dr. Wakeham felt R&D should be working on. It's sort
16:01:51 24 of a concept document, and when I looked at this and
16:01:57 25 saw -- sorry -- saw where we were going and where R&D was,
16:02:04 26 I said to myself, this is sort of a visionary -- there are
16:02:08 27 elements of this that are really quite visionary. So I
16:02:12 28 like this document a lot. It sets the stage for what's

16:02:15 1 Vail, Christians & Associates (619)544-8344 366
16:02:18 2 been going on in R&D ever since.

16:02:29 3 Q On page 28 of this -- these are handwritten
16:02:32 4 numbers that appear on the bottom.

16:02:33 5 A I see. Okay.

16:02:38 6 Q There's a chemistry of cigarette smoke that
16:02:38 6 indicates 80 percent of sidestream smoke is in a gas phase

16:02:46 7 and some -- it looks like 8 percent -- well, I can't read
16:02:52 8 what the top says.
16:02:53 9 Does that say 84 percent?
16:02:57 10 A What it -- what it says is 84 percent -- 827
16:03:03 11 milligrams. That's what it says.
16:03:08 12 Q What do you understand that to mean?
16:03:11 13 A I don't know what that number represents.
16:03:21 14 When I read this, I didn't understand. I just focused on
16:03:24 15 the bar and the way they broke it out in terms of
16:03:30 16 composition of gas to particulate, which then comes to 84
16:03:37 17 percent, which is the same number as the one above. And
16:03:41 18 I'm assuming that number above, 627 milligrams, is the
16:03:46 19 summation of the milligrams in the parentheses for both
16:03:50 20 the gas and particulate.
16:03:52 21 MR. STONE: I think you misspoke at one point
16:03:54 22 when you said it was 827.
16:03:55 23 THE WITNESS: 627 I'm sorry.
BY MR. McGUIRE:
16:04:06 24 Q And what makes up the other percentage that's
16:04:06 25 missing --
16:04:09 26 MR. STONE: Objection; vague and ambiguous,
16:04:10 27 lacks foundation.
16:04:11 28 Vail, Christians & Associates (619)544-8344 367
BY MR. McGUIRE:
16:04:11 1 Q -- the other 12 percent? Sorry to cut you
16:04:17 3 off there.
16:04:17 4 A I think part of the answer to that is found
16:04:24 5 in some of the subsequent pages --
16:04:30 6 MR. STONE: Don't guess. I mean, the answers
16:04:33 7 appear on the page. You add sidestream and mainstream
16:04:36 8 percentages, I think, if I read the numbers, isn't it?
16:04:39 9 Doesn't the sidestream say 84 percent?
16:04:40 10 THE WITNESS: And the mainstream says 16.
16:04:42 11 MR. STONE: And the mainstream says 16
16:04:44 12 percent.
16:04:45 13 THE WITNESS: But the answers are in the
16:04:46 14 subsequent pages, the particulars. I can't -- I can't
16:04:51 15 read it all that well.
16:04:52 16 MR. STONE: I don't mean to testify for you,
16:04:54 17 but it's gas and sidestream is 80 percent. Particulate is
16:04:58 18 4. That's 84 percent. Gas and mainstream is 11.2
16:05:02 19 percent. Particulate is 5.8. That adds up to 17
16:05:09 20 percent.
16:05:11 21 THE WITNESS: 16 percent.
16:05:12 22 MR. STONE: 16 percent. Well, it really
16:05:15 23 doesn't. It adds up to 17. But, okay. 16. It just
16:05:20 24 seems to me they divided it between sidestream and
16:05:23 25 mainstream. But I'll shut up. I'm sorry. I was probably
16:05:27 26 out of line.
16:05:27 27 BY MR. McGUIRE:
16:05:27 28 Q My question had to do with if we are looking
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16:05:31 1 at 100 percent of sidestream smoke, and we're not
16:05:34 2 including mainstream smoke in it, what makes up the
16:05:39 3 missing 16 percent? And is the answer mainstream smoke?
16:05:44 4 A Yes.
16:05:44 5 Q Okay.
16:05:45 6 A Because the header is "Chemistry of Cigarette
16:05:49 7 Smoke." And so he's dividing it between the two and then
16:05:55 8 just adding it up.
16:05:56 9 Q And if this was done today, would this more
16:06:00 10 accurately be entitled "Chemistry of Environmental Tobacco
16:06:05 11 Smoke"?

16:06:06 12 MR. STONE: Objection; lacks foundation.
16:06:07 13 THE WITNESS: I don't -- it could, but I
16:06:09 14 don't think so. This -- this is a representation of
16:06:11 15 sidestream smoke -- smoke, not environmental tobacco smoke.
16:06:16 16 BY MR. McGUIRE:
16:06:16 17 Q What's the -- what is the definition of
16:06:27 18 sidestream smoke?
16:06:28 19 A We went through that --
16:06:31 20 Q No, that was ETS.
16:06:33 21 A -- as part of the definition of ETS.
16:06:37 22 Sidestream smoke is the smoke that comes off the cigarette
16:06:41 23 on the inter puff -- the interval between puffs. That's a
16:06:45 24 part of the ETS definition.
16:06:49 25 Q So it doesn't include mainstream smoke?
16:06:52 26 A Sidestream smoke does not include mainstream
16:06:55 27 smoke.
16:06:56 28 Q Except in this diagram?
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16:06:57 1 A No. But --
16:06:57 2 MR. STONE: Objection; argumentative, vague
16:06:59 3 and ambiguous.
16:06:59 4 THE WITNESS: This is -- "Cigarette Smoke" is
16:07:03 5 the header. And cigarette smoke from a cigarette in this
16:07:08 6 representation, they have mainstream, and they have
16:07:12 7 sidestream.
16:07:12 8 BY MR. McGUIRE:
16:07:12 9 Q What information was removed from the
16:07:34 10 document at page 33?
16:07:37 11 A I don't know.
16:07:37 12 Q Do you know when this document was first
16:07:46 13 marked "Confidential"? Was the document that you reviewed
16:07:51 14 marked "Confidential"?

16:07:52 15 A If it was, I didn't pay any attention to it.
16:07:54 16 Q Was the document in its original form in a
16:07:57 17 composition-type notebook?
16:08:00 18 A It was a document that was -- it was not the
16:08:05 19 original, unless the original looked like this. It was a
16:08:09 20 copy. It appeared to me to be a copy.
16:08:12 21 Q Do you know what information was removed from
16:08:31 22 page 40?
16:08:34 23 MR. STONE: Objection; assumes facts not in
16:08:35 24 evidence.
16:08:37 25 THE WITNESS: You mean this whiteout area?
16:08:41 26 BY MR. McGUIRE:
16:08:42 27 Q Yeah. That had to do with complications.
16:08:45 28 A I have no idea. The document I read did not
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16:08:50 1 have any -- anything deleted. I mean, there was nothing
16:08:58 2 like this on the document that I read.
16:09:06 3 Q Why is continued -- the fact that continued
16:09:09 4 usage develops tolerance a complication, if you know?
16:09:13 5 MR. STONE: Objection; assumes facts not in
16:09:14 6 evidence, calls for speculation, lacks foundation, vague
16:09:17 7 and ambiguous.
16:09:19 8 THE WITNESS: I don't know what this
16:09:22 9 specifically -- what this is referring to here.
16:09:24 10 BY MR. McGUIRE:
16:09:24 11 Q Do you agree with the last statement that
16:09:30 12 "It's also recognized that smoking produces pleasurable
16:09:33 13 reactions or tranquility, and that this is due in at least
16:09:38 14 in part to nicotine, and not entirely to the physical
16:09:41 15 manipulations involved in smoking"?

16:09:43 16 MR. STONE: Improper use of a document which

16:09:44 17 is not admissible, lacks foundation, assumes facts not in
16:09:47 18 evidence, compound, vague and ambiguous.
16:09:50 19
16:09:52 20 THE WITNESS: I have -- I have read reports
16:09:56 21 where people have suggested that that's one of the things
16:10:00 22 that's going on.
16:10:03 23 BY MR. McGUIRE:
16:10:06 24 Q Does Philip Morris agree with this
16:10:06 25 statement?
16:10:08 26 MR. STONE: Same objections. Further object
16:10:11 27 on the grounds that it's outside any area in which this
16:10:13 28 witness has been designated to testify. Assumes facts not
in evidence; namely, that Philip Morris has a position on
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16:10:16 1 that.
16:10:17 2 THE WITNESS: As far as I know, Philip Morris
16:10:19 3 doesn't have a position on it, and I know that Philip
16:10:24 4 Morris scientists have discussed the literature that
16:10:26 5 deals -- that deals with this, this type of -- this type
16:10:32 6 of question.
16:10:33 7 I have no simple position on this, other than
16:10:42 8 to cite some of the more recent information from Dr. Ed
16:10:49 9 #Dominoes group at the University of Richmond. If one
16:10:55 10 talks about tranquility, there is an interesting body of
16:11:01 11 data that suggests that schizophrenics that have a very
16:11:05 12 high smoking prevalence and people who are clinically
16:11:12 13 depressed smoke a lot of cigarettes, that there's
16:11:14 14 something in the smoke. Some people suggest it's
16:11:17 15 nicotine, and others have clearly indicated that it's not
16:11:20 16 nicotine that is, in part, what's responsible for these --
16:11:26 17 these kinds of activities.
16:11:27 18 In terms of people who aren't depressed or
16:11:30 19 schizophrenic with regard to cigarette smoking, people,
16:11:34 20 for instance, as Dr. Warburton has written, has shown,
16:11:40 21 increase in short-term memory, increase in certain kinds
16:11:43 22 of intellectual tasks which he believe -- believes may
16:11:51 23 contribute to some of the pleasurable aspects that people
16:11:57 24 derive from smoking.
16:11:58 25 BY MR. McGUIRE:
16:12:00 26 Q Is the pleasure that smoking gives you the
16:12:03 27 satisfaction of the urge for or demand of the body for
16:12:06 28 nicotine?
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16:12:07 1 MR. STONE: Objection; outside the area in
16:12:09 2 which this witness has been designated to testify.
16:12:12 3 Improperly calls for opinion testimony, vague and
16:12:14 4 ambiguous, lacks foundation.
16:12:17 5 THE WITNESS: Actually, I think that's a
16:12:20 6 very important question. And in the issue of the Journal
16:12:24 7 Tobacco Control in 1999, multiple authors, including
16:12:28 8 authors from the National Institute on Drug Abuse and
16:12:32 9 Dr. Jack Keningfield, former director from Nyda, did a
16:12:37 10 very important study that I think goes directly to the
16:12:41 11 heart of your question.
16:12:41 12 He took 20 smokers, ten men, ten women,
16:12:46 13 double-blind study. He got them to abstain from smoking
16:12:50 14 for three hours and overnight, and then unbeknownst to the
16:12:53 15 investigator or to the individuals, he randomly -- they
16:12:57 16 randomly assigned two kinds of cigarettes, and each group
16:13:02 17 had -- the way this was done -- had an opportunity to do
16:13:06 18 all of this.
16:13:06 19 One group of cigarettes was a regular
16:13:09 20 cigarette in terms of tar and nicotine. The other
16:13:12 21 cigarette was fully denicotinized. So it had no nicotine

16:13:16 22 in the filler, no nicotine in the smoke.
16:13:19 23
16:13:23 24
16:13:27 25
16:13:30 26
16:13:35 27
16:13:35 28

16:13:38 1
16:13:42 2
16:13:45 3
16:13:50 4
16:13:52 5
16:13:55 6
16:13:58 7
16:14:01 8
16:14:01 9
16:14:05 10
16:14:07 11
16:14:08 12
16:14:10 13
16:14:10 14
16:14:13 15
16:14:17 16
16:14:19 17
16:14:21 18
16:14:24 19
16:14:28 20
16:14:30 21
16:14:35 22
16:14:40 23
16:14:44 24
16:14:47 25
16:14:48 26
16:14:51 27
16:14:52 28

16:14:52 1
16:14:59 2
16:15:03 3
16:15:07 4
16:15:08 5
16:15:12 6
16:15:17 7
16:15:18 8
16:15:19 9
16:15:21 10
16:15:25 11
16:15:25 12
16:15:25 13
16:15:26 14
16:15:30 15
16:15:33 16
16:15:37 17
16:15:40 18
16:16:03 19
16:16:12 20
16:16:19 21
16:16:24 22
16:16:27 23
16:16:31 24
16:16:36 25
16:16:42 26

Then either after three hours of abstinence or overnight abstinence, they measured withdrawal symptoms which had been felt for a long time to be the reason, as your question might -- might suggest is the reason people keep smoking.

And what they found was that there was no difference in terms of the withdrawal aspects that they were measuring in their standardized test -- I think it was a Fagerstrom type test between the response to cigarettes with nicotine or without nicotine.

They, therefore, concluded that there's more to smoking than just nicotine with regard to withdrawal and urges.

BY MR. MCGUIRE:

Q Another one of these "no statistical difference so let's draw a conclusion studies"?

MR. STONE: Objection; vague and ambiguous.

THE WITNESS: This is the author's conclusion.

BY MR. MCGUIRE:

Q Was there a -- when you say there was no difference, was there a difference but not a statistically significant difference?

MR. STONE: Same objection.

THE WITNESS: I think -- I don't remember the precise statistics. I just remember reading the paper and their conclusion. And their conclusion was that they could not tell a difference between the withdrawal of symptomatology and the alleviation of that symptomatology, whether the subject smoked cigarettes with or without nicotine in it. Those were the author's -- the author's conclusions.

I found it quite -- quite interesting and actually somewhat compelling.

BY MR. MCGUIRE:

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Q On page 43, a statement is made that "Even though nicotine is believed to be essential to cigarette acceptability, a reduction in level may be desirable for medical reasons."

As of 1961, what medical reasons was Philip Morris aware of as to -- that would be associated with nicotine?

MR. STONE: Objection; lacks foundation, calls for speculation, overbroad, vague and ambiguous, outside any area in which this witness has been designated to testify.

BY MR. MCGUIRE:

Q If you know the answer.

A In that period of time, 1961, there were medical concerns about the effects of nicotine on the cardiovascular system. That is no longer listed as a concern today. But it was at that period of time.

Q Is it -- if you look at page 44, there is a paragraph or two on reduction of carcinogens, and Dr. Wakeham says that, in effect -- well, before -- "because carcinogens are found in practically every class of compounds in smoke," that prohibits complete solution of the problem of eliminating one or two classes of compounds. "The best we can hope for is reduce the particularly bad class." And he says, "i.e. polynuclear hydrocarbons, or phenols.

16:16:48 27 Is that still the position of Philip Morris?
16:16:51 28
16:16:52 1 Vail, Christians & Associates (619)544-8344 375
16:16:55 2 improper use of a document that's not independently
16:16:57 3 admissible, lacks foundation, is compound, vague and
ambigous.
16:17:00 4 THE WITNESS: If by the position of Philip
16:17:04 5 Morris, in the product department we continue to -- and at
16:17:09 6 this point, Accord represents the height of what we've
16:17:12 7 been able to achieve, have been reducing the classes of
16:17:16 8 these chemicals and many more that are listed here.
16:17:20 9 So I guess the short answer is yes, but we've
16:17:24 10 gone way beyond this.
16:17:25 11 BY MR. McGUIRE:
16:17:25 12 Q Let's take it one by one.
16:17:28 13 Do you agree as of now that there are
16:17:30 14 carcinogens in practically every class of compound in
16:17:34 15 smoke?
16:17:34 16 MR. STONE: Same objections.
16:17:37 17 THE WITNESS: I -- I agree that approximately
16:17:40 18 four to five dozen carcinogens have been identified in
16:17:45 19 tobacco smoke.
16:17:46 20 BY MR. McGUIRE:
16:17:46 21 Q And do you agree that of those four or five,
16:17:56 22 they're found in every class of compound or practically
16:17:59 23 every class of compound in smoke?
16:18:01 24 MR. STONE: Objection; vague and ambiguous.
16:18:02 25 BY MR. McGUIRE:
16:18:02 26 Q Since smoke is a complex mixture of compounds.
16:18:06 27 MR. STONE: Objection; vague and ambiguous,
16:18:08 28 lacks foundation, is nonsensical, as phrased.
16:18:12 1 Vail, Christians & Associates (619)544-8344 376
16:18:15 2 THE WITNESS: I -- I really don't
16:18:17 3 understand -- I don't understand the question. Generally
16:18:22 4 speaking, I'll go back to that first page we discussed
16:18:26 5 with particles and gas phase. Things tend to partition in
16:18:30 6 one or the other. So the polynuclear aromatic
16:18:35 7 polycarbons, what he calls polynuclear hydrocarbons, are
16:18:39 8 found in the particle phase. They're not found in the gas
phase.
16:18:41 9 So I'm not sure I understood your question,
16:18:44 10 and I'm not sure the way this is written here, it makes a
16:18:47 11 whole total amount of sense to me now as you ask that
16:18:51 12 question. But there are carcinogens in the gas phase, and
16:18:55 13 there are carcinogens in the particle phase. And,
16:18:59 14 generally speaking, there are different kinds of
16:19:01 15 carcinogens in those two phases.
16:19:04 16 BY MR. McGUIRE:
16:19:04 17 Q In summary, he says on page 48, "Low
16:19:32 18 irritation and low nicotine cigarettes for commercial
16:19:36 19 exploitation will be developed in the course of our
16:19:38 20 present R&D program during the next two to five years with
16:19:42 21 an expenditure of not more than 25 percent of the R&D
16:19:46 22 budget during this period."
16:19:48 23 Did they -- was that goal met, as far as you
16:19:51 24 know?
16:19:52 25 MR. STONE: Objection; improper use of the
16:19:53 26 document for which there's no foundation and is otherwise
16:19:58 27 admissible. Compound, lacks foundation in general, vague
16:20:02 28 and ambiguous, outside the area in which this witness has
16:20:04 1 Vail, Christians & Associates (619)544-8344 377
16:20:07 2 been designated to testify.
16:20:07 2 THE WITNESS: The most -- the easiest way to

16:20:10 3 describe that is to go to the Federal Trade Commission,
16:20:14 4 National Cancer Institute, FTC monograph No. 7, a chapter
16:20:20 5 by Hoffmann and Hoffmann entitled "The Changing
16:20:22 6 Cigarette," in which they have a table by year from 1950
16:20:27 7 out to 1993 of tar and nicotine deliveries in commercial
16:20:36 8 products in the United States.

16:20:37 9 And within that chapter, they have tables
16:20:41 10 that deal with a variety of other smoke constituents that
16:20:47 11 have been modified, including nicotine, with the
16:20:50 12 introduction of more porous papers, certain kinds of
16:20:54 13 filters, and a variety of different kinds of reconstituted
16:20:58 14 tobacco.

16:20:59 15 So I would say that there's published
16:21:04 16 evidence that has been reported in the peer-reviewed
16:21:07 17 literature by a number of scientists, that just being one
16:21:10 18 example, that not only was that accomplished, those goals
16:21:15 19 were exceeded. And it wasn't just by Philip Morris,
16:21:18 20 because the table that's in there is reflecting on the
16:21:24 21 industries, how the products behave for the industry in
16:21:28 22 the United States.

16:21:28 23 BY MR. McGuire:

16:21:28 24 Q Does Philip Morris manufacture Camels?

16:21:33 25 A No.

16:21:33 26 Q That's R.J. Reynolds, if you know?

16:21:35 27 A I think.

16:21:36 28 Q Let's go to 4028. This -- again, I forgot
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16:22:23 1 what your answers were, because we disrupted and figured
16:22:26 2 out this was confidential, once we started. Or we
16:22:29 3 disrupted the questioning.

16:22:30 4 For background purposes, have you seen this
16:22:35 5 document before?

16:22:40 6 A If I have, it's as a result of litigation.

16:22:42 7 Q And when you say "as a result of litigation,"
16:22:44 8 you mean you were shown it in the course of litigation by
16:22:47 9 either attorneys for Philip Morris or attorneys for
16:22:51 10 someone suing Philip Morris?

16:22:53 11 A I believe the latter. I don't know if I've
16:22:58 12 actually ever seen this particular document, but it sure
16:23:01 13 does look familiar for something that I've seen before in
16:23:05 14 litigation.

16:23:07 15 Q In the time that you've -- your answer seems
16:23:12 16 to indicate that you were never shown any documents to
16:23:15 17 prepare you for trial or deposition by any attorney
16:23:18 18 representing Philip Morris?

16:23:20 19 A No. I don't mean to give that impression. I
16:23:23 20 have been shown Dunn documents that have some words that
16:23:30 21 are similar to this, for instance, St. Martin. I know
16:23:36 22 what that's about. I've been shown, I think, at least
16:23:43 23 two, three, maybe four Dunn documents that speak to these
16:23:48 24 kinds of issues.

16:23:48 25 Whether I've -- and I've been shown them both
16:23:51 26 by plaintiffs' lawyers and by Philip Morris lawyers. I
16:23:57 27 don't believe I have specifically seen this document,
16:24:01 28 though. I might have. I didn't mean to give that

16:24:09 1 Vail, Christians & Associates (619)544-8344
impression.

16:24:09 2 Q This document compares smokers to Pavlov's
16:24:24 3 dog, and on page 4, it says "Consider the smoker. Smoking
16:24:28 4 a cigarette is the lever press. The effect of that
16:24:31 5 smoking act upon his person is the reward. That effect
16:24:35 6 reinforces the smoking act. He comes to push the lever
16:24:39 7 80" -- -- excuse me -- "10 to 60 times per day."

16:24:42 8 Does that represent R&D's view of the effect
16:24:47 9 on -- of cigarette smoke on smokers currently?
16:24:50 10 MR. STONE: Object to counsel's statement as
16:24:52 11 to what the document does or does not do. Object to the
16:24:55 12 question on the grounds it's an improper use of a document
16:24:57 13 to which there's no foundation and which is otherwise
16:25:01 14 inadmissible. The question is compound, vague and
16:25:03 15 ambiguous, lacks foundation, well beyond the area in which
16:25:06 16 this witness has been designated to testify.
16:25:09 17 THE WITNESS: Not only is this not the
16:25:11 18 position of R&D, this is the stupidist -- well, actually,
16:25:20 19 no. I've seen other of his documents that probably rise
16:25:23 20 above that -- rise above that level. Just incredibly
16:25:29 21 stupid scientific, if that's what this passes for. It's
16:25:36 22 just self-puffery of some kind. It infuriates me to read
16:25:41 23 some of the stuff this character has written.
16:25:43 24 BY MR. McGUIRE:
16:25:43 25 Q Was he an employee of Philip Morris?
16:25:45 26 A Unfortunately, yes.
16:25:46 27 Q Was he in the R&D program?
16:25:48 28 A Yes, sir.
16:25:48 1 Vail, Christians & Associates (619)544-8344 380
16:25:51 2 Q Was he the head of the R&D program?
16:25:52 3 A Absolutely not.
16:25:55 4 Q What was his job, if you know, during the
time that he was involved at R&D?
16:25:57 5 A He was a scientist, part of a program. He
16:26:02 6 wasn't even the head of the program.
16:26:04 7 Q Was he involved in a smokers' psychology
16:26:09 8 program?
16:26:11 9 MR. STONE: Objection; lacks foundation.
16:26:12 10 THE WITNESS: I don't know.
16:26:13 11 BY MR. McGUIRE:
16:26:13 12 Q Where does he live now?
16:26:15 13 A I think in Richmond, in the Richmond area.
16:26:17 14 Q Have you ever read deposition testimony of
16:26:22 15 Mr. Dunn?
16:26:24 16 A No. But his memos were sufficient -- were
16:26:29 17 quite sufficient. Thank you.
16:26:30 18 Q Is he a psychologist or a psychiatrist?
16:26:33 19 A A psychologist, I believe.
16:26:34 20 Q Okay. Let's go to 4029. A 1/19/72
16:27:05 21 memorandum from Horace -- excuse me -- from Fred Panzer to
16:27:09 22 Horace Kornegay, K-o-r-n-e-g-a-y.
16:27:12 23 Again, do you recognize this document as
16:27:17 24 being one that you have reviewed in the past, either
16:27:22 25 internally as part of your job or as part of your position
16:27:28 26 in answering questions under oath?
16:27:30 27 MR. STONE: Objection; compound.
16:27:33 28 THE WITNESS: I don't believe I've ever seen
Vail, Christians & Associates (619)544-8344 381
16:27:35 1 this memo before.
16:27:38 2 BY MR. McGUIRE:
16:27:38 3 Q You've heard about the Roper proposal in the
16:27:41 4 past, haven't you?
16:27:42 5 A People have mentioned it to me, and my answer
16:27:45 6 when asked about it was that I didn't know anything about
16:27:49 7 it.
16:27:49 8 Q Was Robert Roper an employee of Philip Morris?
16:27:53 9 A I don't know.
16:27:54 10 Q It's consistent with the same strategy that
16:28:12 11 was discussed in the exhibit that we talked about this
16:28:22 12 morning regarding the ETS strategy in 1988. Holding

16:28:29 13 strategy creating doubt about health change without
16:28:31 14 actually denying it. Advocating the public's right to
16:28:35 15 smoke without actually urging them to take up the
16:28:39 16 practice. And encouraging objective scientific research
16:28:42 17 as the only way to resolve the question of health hazard.
16:28:45 18 Would you agree that those three principles
16:28:48 19 are the same that were discussed in that memorandum?
16:28:51 20 MR. STONE: Objection; compound. The
16:28:52 21 documents speak for themselves, lacks foundation, calls
16:28:54 22 for speculation, improper use of two documents, neither of
16:28:58 23 which is admissible or for which a proper foundation is
16:29:01 24 laid. Vague and ambiguous.
16:29:03 25 MR. MILES: It's also argumentative.
16:29:07 26 THE WITNESS: If you're referring to the
16:29:10 27 February 17th, 1988 document --
16:29:15 28 BY MR. McGuIRE:
16:29:15 1 Vail, Christians & Associates (619)544-8344 382
16:29:18 2 Q I think it's 4029.
16:29:23 3 A -- then I would say --
16:29:26 4 MR. STONE: This is 4029, Mr. McGuire, that
16:29:27 5 we're looking at right now.
16:29:28 6 MR. McGuIRE: Okay.
16:29:28 7 BY MR. McGuIRE:
16:29:29 8 Q Go ahead.
16:29:32 9 A That February 17th, 1988 document, I have not
16:29:35 10 seen before. And as to whether that reflects in any way
16:29:39 11 Philip Morris' behavior or position, to the best of my
16:29:43 12 personal knowledge, it does not. So -- and I've never
16:29:45 13 seen this document before.
16:29:49 14 I don't know who either of these two
16:29:52 15 gentlemen are, and I really don't know what the Roper
16:29:57 16 proposal is. So I can't put this in any kind of context
16:30:01 17 and be able to relate this to that February 17th, 1988
document. I don't know who these people are.
16:30:03 18 Q You don't know who Mr. Kornegay or Mr. Panzer
16:30:07 19 are?
16:30:07 20 A No, I don't.
16:30:09 21 Q Do you know what cigarette controversy was --
16:30:12 22 what the controversy was in 1972 as opposed to other
16:30:16 23 controversies that have been described in other documents
16:30:21 24 that we've marked as exhibits today?
16:30:23 25 MR. STONE: Objection; lacks foundation,
16:30:24 26 compound, argumentative, improper use of a document that's
16:30:28 27 not admissible, calls for speculation, outside the scope
16:30:31 28 of this witness's designation.
16:30:33 1 Vail, Christians & Associates (619)544-8344 383
16:30:35 2 THE WITNESS: I don't know. We're talking
16:30:40 3 about two documents separated by approximately 16 years,
16:30:45 4 generated by different people, none of which I believe are
16:30:48 5 or have been employees of Philip -- that I'm aware of,
16:30:52 6 employees of Philip Morris. And the use of the word
16:30:54 7 "controversy" in one document by these people or this
16:30:57 8 person and the use of "controversy" in another document by
16:30:59 9 somebody else, I don't know if they're talking about the
16:31:03 10 same thing in the same way.
16:31:05 11 BY MR. McGuIRE:
16:31:32 12 Q There are separate paragraphs for the
16:31:36 13 litigation front, the political front, and the public
opinion front.
16:31:39 14 And have you -- I want to know if you've seen
16:31:44 15 any documents authored after 1972 that deal with the
16:31:53 16 company's position regarding cigarette controversies that
16:31:57 17 break down the company's position on those three

16:32:01 18 political -- or those three fronts: litigation,
16:32:03 19 political, and public opinion.
16:32:06 20 MR. STONE: Objection; improper use of a
16:32:08 21 document that's inadmissible, no foundation, compound,
16:32:12 22 argumentative, overbroad.
16:32:14 23 THE WITNESS: I don't believe so.
16:32:15 24 BY MR. McGuIRE:
16:32:15 25 Q Is it the company's present position that
16:32:25 26 people who suffer injuries as a result of exposure to
16:32:31 27 environmental tobacco smoke is as a result of their
16:32:38 28 constitutional makeup --
Vail, Christians & Associates (619)544-8344 384
16:32:40 1 MR. STONE: Objection.
16:32:41 2 BY MR. McGuIRE:
16:32:41 3 Q -- being different than the general
16:32:43 4 population?
16:32:44 5 MR. STONE: Objection; lacks foundation as to
16:32:48 6 whether or not there's a company position on that
16:32:50 7 particular subject, assumes facts not in evidence, vague
16:32:53 8 and ambiguous, improperly calls for opinion testimony.
16:32:57 9 MR. MILES: I think it's also overly broad
16:33:00 10 and an incomplete hypothetical.
16:33:04 11 THE WITNESS: I don't know the answer to that
16:33:06 12 question.
16:33:07 13 BY MR. McGuIRE:
16:33:07 14 Q Is it -- was it your testimony that some
16:33:19 15 people suffering injuries as a result -- suffering
16:33:24 16 asthmatic-type injuries as a result of exposure to ETS was
16:33:28 17 because they were particularly sensitive and it had to do
16:33:33 18 with their constitutional makeup?
16:33:35 19 MR. STONE: Objection; misstates the
16:33:36 20 witness's prior testimony, vague and ambiguous.
16:33:39 21 THE WITNESS: What I specifically said -- and
16:33:41 22 this refers back to some of the studies of Lehrer out of
16:33:45 23 Tulane, where he has a population of asthmatics, some of
16:33:51 24 which claim to be tobacco-smoke sensitive. Within a small
16:33:57 25 subgroup of those individuals, he has found a response to
16:34:04 26 exposure to environmental tobacco smoke with a diminution
16:34:11 27 in, I want to say, FEV1 and/or FEV2, with small but
16:34:19 28 measurable.
Vail, Christians & Associates (619)544-8344 385
16:34:22 1 I believe he could not draw any conclusions
16:34:25 2 as what the consequences -- health consequences of that
16:34:29 3 would be.
16:34:30 4 Having said that, I have said that exposure
16:34:35 5 of some asthmatics can exacerbate or trigger an
16:34:39 6 asthmatic -- an asthmatic response.
16:34:45 7 And since nobody really understands the
16:34:48 8 constitutional elements that go into asthma and why
16:34:51 9 asthmatics respond to certain things, though we would sure
16:34:56 10 like to know the answer to that, I think the answer to
16:34:58 11 your question is, as present, unknown.
16:35:03 12 BY MR. McGuIRE:
16:35:03 13 Q Isn't it the present position of Philip
16:35:11 14 Morris that lung cancer is not a known cause of -- excuse
16:35:22 15 me -- exposure to ETS is not a known cause of lung cancer,
16:35:27 16 because there are other causes that are equally as
16:35:30 17 probable?
16:35:31 18 MR. STONE: Objection; asked and answered,
16:35:34 19 improperly calls for opinion testimony, vague and
16:35:37 20 ambiguous, assumes facts not in evidence.
16:35:39 21 You can answer.
16:35:40 22 THE WITNESS: Yeah, I really take exception

16:35:42 23 to the way you've characterized it. The two -- the two
16:35:48 24 elements of your question are true, but they're not
16:35:53 25 related in the way that you've tried to relate them.
16:35:59 26 Yes, there are other factors that have been
16:36:02 27 identified with or associated with or believed to cause
16:36:07 28 lung cancer. And those need to be accounted for in any
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16:36:13 1 study. And it's not simply our position. It would be the
16:36:15 2 position of any responsible scientist carrying out such a
16:36:19 3 study or evaluating such a study.
16:36:22 4 In the absence of taking those kinds of
16:36:27 5 factors -- and they're just one dimension of factors that
16:36:31 6 you would take into account -- it leaves you with very
16:36:36 7 limited or no ability to draw any conclusions.
16:36:39 8 Q How is what you just said different from what
16:36:43 9 appears on the next page as being the new message that
16:36:49 10 millions of people would be receptive to, regarding
16:36:53 11 cigarette smoking?
16:36:54 12 MR. STONE: Objection; improper use of a
16:36:56 13 document --
16:36:56 14 THE WITNESS: Where are we?
16:36:57 15 MR. STONE: -- which is not admissible, to
16:37:00 16 which there's no foundation, vague and ambiguous,
16:37:01 17 improperly calls for opinion testimony, argumentative.
16:37:04 18 BY MR. McGuIRE:
16:37:04 19 Q The part that says "Cigarette smoking may not
16:37:07 20 be the health hazard that the antismoking people say it
16:37:09 21 is," underlined, "because other alternatives are at least
16:37:15 22 as probable."
16:37:15 23 MR. STONE: Same objections.
16:37:16 24 THE WITNESS: Well, first, if we can focus on
16:37:20 25 this, the active smoking, this is not the position that
16:37:24 26 Philip Morris has taken with regard to active smoking.
16:37:27 27 And to compare this document in 1972, issued
16:37:34 28 by whoever these gentlemen -- gentlemen are, to ETS 28
Vail, Christians & Associates (619)544-8344 387
16:37:42 1 years later, I think the reality is, one, this is not our
16:37:45 2 position with regard to active smoking and the example you
16:37:49 3 gave with regard to lung cancer.
16:37:53 4 And in terms of environmental tobacco smoke
16:37:57 5 and adverse -- adverse effects, I just point you simply to
16:38:04 6 some of the documents created by the International Agency
16:38:07 7 for Research on Cancer, including Volume 38, 1986, on
16:38:13 8 tobacco smoke where they, themselves, lay out
16:38:17 9 constitutional issues, and much of the work that's been
16:38:21 10 going on around the world has been looking for what are
16:38:24 11 called genetic polymorphisms that would help explain why
16:38:30 12 only certain people who smoke get certain kinds of
16:38:33 13 diseases.
16:38:33 14 So this is not a view created from whole
16:38:37 15 cloth by Philip Morris or whoever these guys are. This is
16:38:40 16 an important, relevant, and contemporary concept that has
16:38:45 17 continued to be pursued by researchers, public health
16:38:48 18 officials around the world.
16:38:49 19 BY MR. McGuIRE:
16:38:49 20 Q Did Philip Morris contribute to Volume 38 of
16:38:52 21 the 1986 IARC study that you quoted in your answer?
16:38:57 22 A Indirectly through the studies that it funded
16:39:01 23 on the Council for Tobacco Research that were cited by the
16:39:04 24 International Agency for Tobacco Research on cancer.
16:39:30 25 Q Who is Burns Roper?
16:39:33 26 A Who?
16:39:34 27 Q Burns Roper?

16:39:35 28 A I have no idea.
Vail, Christians & Associates (619)544-8344 388
16:39:37 1 Q The principal authors would be Burns, Roper,
16:39:40 2 and an eminent research scientist.
16:39:44 3 That doesn't help you identify him?
16:39:48 4 A Burns Roper?
16:39:48 5 Q Yeah.
16:39:49 6 A I never heard of the name.
16:39:51 7 Q How about Kastenbaum and Kloepfer,
16:39:54 8 K-l-o-e-p-f-e-r?
16:39:57 9 A I see it. I don't know those names.
16:39:59 10 Q And you don't know whether they've ever
16:40:02 11 worked for Philip Morris before?
16:40:04 12 A I have no idea.
16:40:04 13 Q Do you know if they worked for any arm of
16:40:09 14 Philip Morris, the Tobacco Control Group, the CIAR, or any
16:40:17 15 of those groups?
16:40:17 16 A CIAR didn't come into existence until March
16:40:21 17 of 1988. This is May of 1972.
16:40:24 18 Q What was --
16:40:24 19 A These names -- these names are absolutely
16:40:27 20 unfamiliar to me. If somebody were interested whether
16:40:30 21 they were employees, all they'd have to do is search the
16:40:34 22 human resources file to find out. But I've never heard
16:40:38 23 their names in the time I was at Philip Morris.
16:40:43 24 Q Have you discussed the Roper proposal with
16:40:55 25 any of your predecessors in R&D at any time?
16:41:05 26 MR. STONE: Objection; asked and answered.
16:41:07 27 THE WITNESS: No.
16:41:08 28 BY MR. McGUIRE:
Vail, Christians & Associates (619)544-8344 389
16:41:08 1 Q Let's go to -- who is George Weisman?
16:41:13 2 A A retired Philip Morris executive.
16:41:17 3 Q And is Robert P. Roper different than Burns
16:41:21 4 Roper?
16:41:21 5 MR. STONE: Objection; lacks foundation.
16:41:22 6 THE WITNESS: I have absolutely no idea.
16:41:24 7 BY MR. McGUIRE:
16:41:24 8 Q We do know that Robert P. Roper was
16:41:27 9 associated with Philip Morris at some time in the late
16:41:31 10 fifties, right?
16:41:32 11 A I don't know.
16:41:33 12 Q Exhibit 4030, for identification, dated
16:41:36 13 September 22nd, 1959, is from Helmut Wakeham, and he is
16:41:43 14 certainly a Philip Morris employee, right?
16:41:45 15 A At that time, yes.
16:41:45 16 Q Okay. To Robert P. Roper.
16:41:52 17 Does that help refresh your memory, or does
16:41:55 18 that at least indicate to you that he was, at one time, an
16:41:59 19 employee of -- "he" being Robert P. Roper -- of Philip
16:42:05 20 Morris?
16:42:06 21 MR. STONE: Objection; lacks foundation, is
16:42:07 22 compound.
16:42:09 23 THE WITNESS: Are we trying to connect the
16:42:12 24 Roper in 4030 with the Roper proposal in 4029?
16:42:17 25 BY MR. McGUIRE:
16:42:17 26 Q Well, I don't know.
16:42:19 27 A I don't know either.
16:42:19 28 Q We're just searching for truth here.
Vail, Christians & Associates (619)544-8344 390
16:42:21 1 A Well, the truth is --
16:42:22 2 MR. STONE: Mr. McGuire, let's not get on
16:42:25 3 your high horse. You've never been on a search for truth

16:42:27 4 since this case started.
16:42:29 5 MR. MC GUIRE: Is that right?
16:42:29 6 MR. STONE: You've got a search for one thing
16:42:31 7 and one thing only, and it has nothing to do with truth.
16:42:34 8 MR. MC GUIRE: Well, I tell you what, I don't
16:42:37 9 appreciate this kind of trash talk.
16:42:39 10 MR. STONE: I don't appreciate you starting
16:42:40 11 it.
16:42:41 12 MR. MC GUIRE: Especially if -- the search for
16:42:43 13 truth is not trash talk, sir.
16:42:44 14 MR. STONE: It is when you claim to be on a
16:42:47 15 search for truth.
16:42:47 16 MR. MC GUIRE: If you'd like to put on some
16:42:49 17 boxing gloves or something like that, I'd be happy to
16:42:52 18 accommodate you.
16:42:52 19 MR. STONE: Anytime you want.
16:42:53 20 MR. MC GUIRE: Well, we can do that as soon as
16:42:55 21 we adjourn here. But I'm not going to stand for any more
16:42:57 22 of your trash talk, okay.
16:42:58 23 MR. STONE: You have available to you a whole
16:43:00 24 litany of options. You can choose any one you want.
16:43:03 25 MR. MC GUIRE: Uh-huh.
16:43:04 26 MR. STONE: I'm telling you when you stand on
16:43:05 27 your high horse and start preaching to this witness that
16:43:08 28 what you're after is the search for truth, that's
16:43:10 1 Vail, Christians & Associates (619)544-8344 391
inappropriate, and you know it.
16:43:11 2 MR. MC GUIRE: I don't think it is.
16:43:12 3 MR. STONE: It is.
16:43:13 4 MR. MC GUIRE: I'd be happy to take this
16:43:14 5 videotape down to the judge and let him determine who is
16:43:17 6 on a high horse and who isn't.
16:43:19 7 MR. STONE: You should do that.
16:43:20 8 MR. MC GUIRE: Who is being disruptive and who
16:43:22 9 isn't.
16:43:22 10 MR. STONE: You can show this videotape to
16:43:24 11 the court. I'd be quite happy to have the court see how
16:43:27 12 you've spent more than the entire afternoon going back to
16:43:32 13 conduct which occurred before this witness had even joined
16:43:33 14 Philip Morris, at a time before he'd even reached the age
16:43:36 15 of majority.
16:43:37 16 MR. MC GUIRE: The judge has made it clear
16:43:39 17 that historical perspectives are something that can be
16:43:40 18 done in this case, and I haven't spent a lot of time on
16:43:42 19 this.
16:43:42 20 MR. STONE: You've spent more than the entire
16:43:44 21 afternoon -- don't cut me off. You've spent more than the
16:43:45 22 entire afternoon on it, and what the judge has said is
16:43:47 23 that there may be some limited historical evidence that
16:43:50 24 has some bearing on current conduct, certainly not the
16:43:53 25 kind of inquiry you've engaged in today.
16:43:55 26 MR. MC GUIRE: Well, this is discovery, and
16:43:57 27 I'm tired of talking with you and wasting more time.
16:44:00 28 MR. STONE: Then ask a question and don't
16:44:02 1 Vail, Christians & Associates (619)544-8344 392
make comments on the record.
16:44:03 2 MR. MC GUIRE: Why don't you follow your own
16:44:04 3 advice.
16:44:07 4 BY MR. MC GUIRE:
16:44:08 5 Q Exhibit 4030, for identification, September
16:44:11 6 22nd, 1959, is this a document that you've seen in the
16:44:14 7 past?
16:44:14 8 A No, sir.

16:44:15 9 Q Do you recognize professor -- excuse me --
16:44:18 10 Dr. Wakeham's signature on the last page?
16:44:22 11 A It looks different than the last one, but I
16:44:24 12 have no reason one way or the other to doubt that this is
16:44:27 13 not something written by Dr. -- by Dr. Wakeham. Though,
16:44:35 14 I've never seen this before.
16:44:36 15 Q Is -- is whether or not cigarette smoking is
16:44:44 16 a cause for lung cancer a matter of definition, as you
16:44:48 17 view it today?
16:44:51 18 MR. STONE: Objection; lacks foundation,
16:44:52 19 calls for speculation, improperly calls for opinion
16:44:55 20 testimony.
16:44:56 21 THE WITNESS: Could you point me specifically
16:44:58 22 where you're reading from?
16:44:59 23 MR. STONE: I don't think he's asking about
16:45:00 24 the document. I think he's just asking you the question
16:45:02 25 independent.
16:45:03 26 THE WITNESS: So please repeat the question.
BY MR. McGUIRE:
16:45:04 27 Q Do you -- does Philip Morris agree that
16:45:04 28 Vail, Christians & Associates (619)544-8344 393
16:45:08 1 cigarette smoking is a cause of lung cancer -- or whether
16:45:11 2 cigarette smoking is a cause of lung cancer is a matter of
16:45:14 3 definition?
16:45:15 4 MR. STONE: Objection; improperly -- I'm
16:45:18 5 sorry. Assumes facts not in evidence; namely, that there
16:45:23 6 is a position on this. It's vague and ambiguous as
16:45:25 7 phrased. It lacks context and improperly calls for
16:45:29 8 opinion testimony.
16:45:30 9 You can answer, if you can.
16:45:31 10 THE WITNESS: What I have -- I have said in
16:45:35 11 this matter is that based on the epidemiological evidence,
16:45:40 12 smoking can be a cause of lung cancer in some people.
16:45:57 13 BY MR. McGUIRE:
16:45:57 14 Q I know what you said, but do you agree that
16:46:01 15 whether or not it's a cause is a matter of definition, how
16:46:06 16 you define cause?
16:46:07 17 MR. STONE: Same objections previously
16:46:09 18 stated.
16:46:09 19 THE WITNESS: Absolutely. And I would refer
16:46:11 20 you, if you were interested, for more complete
16:46:15 21 examination, to Chapter 3 of the Surgeon General's 1964
16:46:20 22 report on causation, where they concluded it was a matter
16:46:26 23 of judgment as well.
16:46:27 24 BY MR. McGUIRE:
16:46:27 25 Q Is that Philip Morris' position today?
16:46:32 26 MR. STONE: Objection; assumes facts not in
16:46:33 27 evidence.
16:46:34 28 BY MR. McGUIRE:
16:46:34 1 Vail, Christians & Associates (619)544-8344 394
16:46:36 2 Q It's just a matter of judgment.
16:46:37 3 MR. STONE: Objection; assumes facts not in
16:46:41 4 evidence; namely, that there is or is not a position on
16:46:43 5 that particular question. Vague and ambiguous, improperly
16:46:45 6 calls for opinion testimony, outside the area in which
16:46:49 7 this witness has been designated to testify.
16:46:52 8 THE WITNESS: It's clearly my position. In
16:46:56 9 the absence of having definition of terms, conversations
16:47:00 10 become, I would say, moot, if not meaningless.
16:47:00 11 BY MR. McGUIRE:
16:47:08 12 Q Well, I -- is your position Philip Morris'
16:47:08 13 position?
16:47:08 13 MR. STONE: Same objections. Also

16:47:13 14 argumentative.
16:47:13 15
16:47:16 16 THE WITNESS: I have said in testimony, as
16:47:21 17 an expert witness for the company, what I have just told
you.
16:47:21 18 BY MR. McGUIRE:
16:47:21 19 Q That cigarette smoke is a matter of -- or
16:47:25 20 smoking cigarettes is a matter of judgment?
16:47:28 21 A No, sir. That's your characterization. What
16:47:30 22 I said was based upon the epidemiological evidence,
16:47:33 23 smoking can cause lung cancer in some people. It seems to
16:47:40 24 me rather unambiguous.
16:47:42 25 Q Does Philip Morris agree that -- let me
16:47:55 26 strike that.
16:48:16 27 If you look at No. 4 --
16:48:18 28 A Which document are we on?
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16:48:20 1 Q The same document.
16:48:21 2 A 4030?
16:48:22 3 Q Yes.
16:48:23 4 It says, "Serious consideration should be
16:48:25 5 given to nicotine as a source of smoking satisfaction and
16:48:29 6 to design" -- "and the design of a cigarette which gives
16:48:32 7 the smoker this satisfaction with low tar delivery."
16:48:35 8 Did the company actually go on and do that?
16:48:38 9 MR. STONE: Object to the question on the
16:48:40 10 grounds it improperly is based on a document for which
16:48:43 11 there is no foundation and which is otherwise
16:48:45 12 inadmissible. Vague and ambiguous.
16:48:47 13 BY MR. McGUIRE:
16:48:47 14 Q To complete the sentence, he says, "In my
16:48:49 15 opinion, such a product is vital to our cigarette
16:48:52 16 business."
16:48:52 17 So the question is, did the company go out
16:48:54 18 and develop a cigarette where the nicotine was the -- was
16:49:01 19 delivered as a source of satisfaction and tar delivery was
16:49:06 20 lowered?
16:49:07 21 MR. STONE: Objection; improperly uses a
16:49:11 22 document which is inadmissible. The question is improper
16:49:13 23 to form, lacks foundation, vague and ambiguous.
16:49:14 24 You can answer as best you can.
16:49:18 25 THE WITNESS: I'm not -- I'm not aware of any
16:49:20 26 commercial product that Philip Morris has on the market
16:49:25 27 that satisfies this, as I understand this No. 4.
16:49:32 28 MR. MILES: Could we take about a two-minute
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16:49:35 1 break. I need to make a quick phone call. I somehow had
16:49:38 2 been led to believe -- and I'm not faulting anybody, that
16:49:41 3 we'd be done and out of here by 5:00. I really need to
16:49:45 4 call somebody before they disappear. I just need two
16:49:48 5 minutes, if we may just take a break.
16:49:49 6 MR. McGUIRE: Sure.
16:49:50 7 MR. MILES: Thank you.
16:49:52 8 VIDEOGRAPHER: We are off the record. The
16:49:54 9 time is 4:50.
16:49:55 10 (Recess.)
16:55:56 11 VIDEOGRAPHER: We are back on the record.
16:55:59 12 The time is 4:56.
16:56:01 13 BY MR. McGUIRE:
16:56:01 14 Q What does it mean when cigarettes contain
16:56:06 15 equimolar amounts of nicotine?
16:56:10 16 MR. STONE: Objection; improperly calls for
16:56:13 17 opinion testimony.
16:56:15 18 THE WITNESS: Equimolar is a physical

16:56:19 19 chemical way of describing a mass of a material, and so
16:56:26 20 equi, would mean equal. Molar is a way of calculating
16:56:33 21 that mass that takes into consideration the molecular
16:56:36 22 weight of the material. So you would normalize for the
16:56:40 23 molecular weight of the -- of the material.
16:56:43 24
BY MR. McGUIRE:
16:56:43 25 Q Have Philip Morris cigarettes contained
16:56:47 26 nicotine as the base, as opposed to the sitrate?
16:56:52 27 MR. STONE: Objection; lacks foundation,
16:56:56 28 calls for opinion testimony.
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16:56:58 1 THE WITNESS: Philip Morris cigarettes, as
16:57:03 2 they are sold in the United States, contain all of the
16:57:05 3 natural forms of nicotine that exist in tobacco, which
16:57:08 4 would include those and others.
16:57:13 5 BY MR. McGUIRE:
16:57:15 6 Q So do the cigarettes contain nicotine in both
16:57:20 7 base and sitrate?
16:57:21 8 MR. STONE: Objection; asked and answered,
16:57:23 9 improper as to form.
16:57:26 10 You can answer, if you can.
16:57:28 11 THE WITNESS: Again, those are two of the
16:57:29 12 forms in which nicotine is naturally found in tobacco and
16:57:33 13 in cigarettes.
16:57:34 14 BY MR. McGUIRE:
16:57:35 15 Q I know. Obviously, I'm addressing
16:57:37 16 Exhibit 4034, for identification, dated December 14, 1990,
16:57:43 17 from F.B. Gullotta, G-u-l-l-o-t-t-a, et al., to Robin
16:57:48 18 Kinser, K-i-n-s-e-r (sic).
16:57:51 19 (Exhibit 4034 was marked for identification.)
16:57:51 20 BY MR. McGUIRE:
16:57:52 21 Q Is this a document that you saw at or about
16:57:53 22 the time that it was authored?
16:57:56 23 A Yes. I'm copied on this document.
16:58:02 24 Q Uh-huh.
16:58:03 25 And the subject matter is
16:58:04 26 electrophysiological and subjective consequences of
16:58:08 27 tobacco filler pH modifications, a proposal.
16:58:12 28 When the statement says cigarettes containing
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16:58:19 1 nicotine as a base produced greater electrophysiological
16:58:24 2 effects than those produced by cigarettes containing
16:58:27 3 nicotine as the sitrate, what cigarettes were they talking
16:58:31 4 about?
16:58:32 5 MR. STONE: Objection; lacks foundation,
16:58:33 6 calls for speculation.
16:58:34 7 THE WITNESS: They're talking about
16:58:35 8 experimental cigarettes made by Philip Morris in the -- in
16:58:39 9 the semi works to whatever specifications Dr. Gullotta had
16:58:45 10 set out. These are experimental test cigarettes.
16:58:48 11 BY MR. McGUIRE:
16:58:48 12 Q And what are electrophysiological responses?
16:58:56 13 A These are recordings taken on the scalp of
16:59:03 14 humans, looking at electrical activity.
16:59:08 15 Q And if there is more electrical activity,
16:59:12 16 what does that signify, if anything?
16:59:14 17 MR. STONE: Objection; improperly calls for
16:59:21 18 opinion testimony.
16:59:23 19 THE WITNESS: It's not simply more or less.
16:59:27 20 There is a particular pattern that Dr. Gullotta, through
16:59:31 21 the use of very sophisticated computers and programs, is
16:59:35 22 able to look at wave patterns and look for shifts in those
16:59:41 23 patterns which are somehow reflective of electrical

16:59:44 24 activity in the brain.
16:59:46 25 What they mean, neither he nor I know.
16:59:50 26 BY MR. McGUIRE:
16:59:50 27 Q Well, what did you understand when you
16:59:54 28 perceived this memo -- by the way, let me strike that and
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begin again.
16:59:57 1 Is this on a form that you recognize as being
16:59:57 2 Philip Morris document?
17:00:01 3 A I have seen this. I remember getting this
17:00:04 4 memo.
17:00:06 5 Q All right. I'm asking you about the form
17:00:07 6 right now so that I can use this testimony to equate to
17:00:08 7 other forms that are very similar. So that's the reason
17:00:11 8 for the question.
17:00:16 9 17:00:16 10 So does it appear to be on the type of
17:00:19 11 letterhead used in the 1990s by Philip Morris?
17:00:23 12 A If I remove this -- these numbers and this
17:00:28 13 marginalia, the answer is yes.
17:00:30 14 Q How long was this type of letterhead used?
17:00:37 15 A I can't answer that.
17:00:39 16 Q Is it still used today?
17:00:40 17 A I don't know.
17:00:42 18 Q Was it used as of February 1999?
17:00:45 19 A I don't know. It would be easy enough to
17:00:49 20 find out, but I don't know.
17:00:50 21 Q Okay. When you read the last sentence of the
17:01:01 22 first paragraph that there was a method of producing
17:01:07 23 greater electrophysiologic effects, what did that equate
17:01:11 24 to, other than your previous answer, which was a lot of
17:01:17 25 complicated information on a graph or a chart?
17:01:24 26 MR. STONE: Objection; lacks foundation,
17:01:26 27 vague and ambiguous, improperly calls for opinion
17:01:30 28 testimony.
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17:01:31 1 THE WITNESS: And you're specifically asking
17:01:32 2 me what again, referring to this?
17:01:34 3 BY MR. McGUIRE:
17:01:34 4 Q What did greater electrophysiological effects
17:01:38 5 equate to in terms of smoker usage?
17:01:41 6 MR. STONE: Same objections.
17:01:43 7 THE WITNESS: As I said before, neither I nor
17:01:45 8 Dr. Gullotta actually knew the answers to that question.
17:01:48 9 BY MR. McGUIRE:
17:01:48 10 Q What was the purpose of testing for
17:01:54 11 electrophysiological effects?
17:01:58 12 A The intent, as I understood it, was to
17:02:01 13 provide a more objective evaluation of the smoker's
17:02:07 14 response, because you can see, he has both subjective and
17:02:11 15 electrophysiological, where you ask somebody a series of
17:02:17 16 questions about the cigarette and the smoke from -- from
17:02:20 17 that cigarette. Does it produce a certain kind of mouth
17:02:25 18 feel, a peppery response? Does it cause somewhat they
17:02:31 19 refer to as throat grab? Is this something -- I don't
17:02:35 20 have the questionnaire in front of me. But it's a series
17:02:38 21 of questions.
17:02:38 22 And what Frank -- Frank found out, that
17:02:42 23 oftentimes the subjective responses were not as consistent
17:02:48 24 as what he derived from the electrophysiological effects.
17:02:52 25 Q How do you -- why would you want to optimize
17:02:58 26 electrophysiological responses to cigarettes by modifying
17:03:02 27 the filler pH?
17:03:05 28 MR. STONE: Objection. It assumes facts not

17:03:07 1 in evidence, improperly calls for opinion testimony.

17:03:09 2 THE WITNESS: In these -- in this
17:03:12 3 experimental type of situation, he was trying to test the
17:03:17 4 notion that indeed if you did change the proportion --
17:03:25 5 proportionality of the different forms of nicotine, that
17:03:28 6 that would have a consequence as far as how the smoker
17:03:31 7 perceived it, either as measured subjectively or as
17:03:35 8 measured electrophysiologically. And this is 1990.

17:03:41 9 BY MR. McGUIRE:

17:03:41 10 Q What would be the effect of producing more
17:03:44 11 free nicotine in the use of a cigarette?

17:03:46 12 A Well, According to Frank, he says this would
17:03:52 13 suggest that you have enhanced responses.

17:03:56 14 Q What do you interpret that to mean?

17:04:00 15 A Well, I think part of the intent here is that
17:04:03 16 you could deliver lower amounts of nicotine that as far as
17:04:09 17 the smoker were concerned could be perceived as a higher
17:04:13 18 amount of nicotine.

17:04:14 19 Q Or you could deliver the same amount of
17:04:16 20 nicotine and the smoker would perceive it as more?

17:04:19 21 A Absolutely.

17:04:21 22 Q And isn't my interpretation what Mr. Gullotta
17:04:27 23 was talking about at the time?

17:04:28 24 MR. STONE: Objection; calls for speculation,
17:04:31 25 lacks foundation.

17:05:15 26 THE WITNESS: I don't disagree with your
17:05:16 27 analysis.

17:05:16 28 BY MR. McGUIRE:

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17:05:22 2 Q Did -- did this investigation go forward?

17:05:29 3 A It went on for -- for some time and then was
dropped.

17:05:29 4 Q Was -- was there any production adjustments
17:05:38 5 made as a result of the experiments that are discussed
17:05:41 6 here?

17:05:41 7 A None of this was ever commercialized. This
17:05:48 8 was a scientific investigation by Frank and his folks on a
17:05:54 9 question that had been raised by other people.

17:05:58 10 Q Okay. Let's go to Exhibit 4035.

17:06:01 11 (Exhibit 4035 was marked for identification.)

17:06:04 12 BY MR. McGUIRE:

17:06:04 13 Q Do you recognize this document?

17:06:07 14 MR. STONE: This document apparently has been
17:06:08 15 designated highly confidential. It requires the highly
17:06:11 16 confidential provisions of the protective order to be
17:06:14 17 invoked.

17:06:15 18 Counsel, I don't know if you have a secure
17:06:17 19 room that complies with the provisions of the protective
17:06:21 20 order. I know that court reporters do not. So no copies
17:06:24 21 of this document consistent with the terms of the
17:06:27 22 protective order should be left with anyone that does not
17:06:29 23 have that secure room, if the provisions of the protective
17:06:32 24 order are to be complied with.

17:06:34 25 I don't know where this document came from or
17:06:36 26 how you obtained it. I don't believe you obtained it from
17:06:39 27 Philip Morris directly in connection with any production
17:06:42 28 because I don't believe we have produced any highly

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17:06:47 2 confidential documents in this litigation.

17:06:51 3 In any event, it appears to me that your
17:06:53 4 possession of this document is a violation of the
protective order in effect in the litigation entitled

17:06:55 5 "Philip Morris versus ABC." As such, I think either you
17:06:58 6 or whoever provided it to you is in contempt of that
17:07:01 7 protective order.
17:07:02 8 In any event, given the order in this case,
17:07:05 9 your continued possession of this document would put you
17:07:08 10 in violation of the protective order in this action.
17:07:11 11 I suggest that what you should do is return
17:07:14 12 all copies of this document to me. I'll maintain them
17:07:17 13 until such time that you have a facility that permits you
17:07:19 14 to maintain highly confidential documents. I offer that
17:07:22 15 as an accommodation. You're welcome to note for the
17:07:26 16 record production numbers.
17:07:27 17 MR. MC GUIRE: What type of facility are you
17:07:29 18 speaking of?
17:07:30 19 MR. STONE: The facility described in the
17:07:32 20 protective order that you read a moment ago and signed
17:07:35 21 indicating that you read and understand it.
17:07:36 22 MR. MC GUIRE: No. I didn't sign it as I read
17:07:39 23 and understood it. I told you I didn't have time to
17:07:42 24 understand it. I certainly read it.
17:07:43 25 MR. STONE: Mr. McGuire, I hope you're
17:07:45 26 conscious of your obligations as both an officer of the
17:07:48 27 court and as counsel in this case under that order.
17:07:51 28 MR. MC GUIRE: You know, I'm listening to your
17:07:52 1 Vail, Christians & Associates (619)544-8344 404
17:07:56 2 interpretation of what that order says, and without any
17:07:59 3 guidance as to whether it applies or not. I don't think
17:08:02 4 that this is a highly confidential document. It doesn't
17:08:06 5 appear to be to me. It certainly is relevant. It has to
17:08:11 6 do with this witness. It's dated in time. It impeaches
17:08:15 7 answers that he's given under oath.
17:08:17 8 And so -- and I don't know about this
17:08:20 9 facility. Is this someplace I'm supposed to keep it and
17:08:23 10 then I can take it out, or is this someplace where we make
17:08:27 11 copies of it? Maybe you can show me where it is --
17:08:30 12 MR. LENDRUM: Paragraph 11C of the protective
17:08:30 13 order.
17:08:56 14 MR. MC GUIRE: Okay. Thank you.
17:09:03 15 MR. MILES: I propose we go off camera, go
17:09:04 16 off record.
17:09:04 17 Counsel?
17:09:05 18 MR. MC GUIRE: Yes.
17:09:06 19 MR. MILES: Okay.
17:09:08 20 VIDEOGRAPHER: We are off the video record,
17:09:11 21 and the time is 5:09.
17:09:13 22 MR. STONE: We're still on transcript?
17:09:15 23 MR. MILES: We're still on transcript
17:09:17 24 record. We're not on camera record.
17:09:45 25 MR. MC GUIRE: It says where you should
17:09:54 26 maintain it, a locked filing cabinet and otherwise secure
17:10:07 27 room in a designated attorney's law office, take it out
17:10:33 28 for making copies, to allow filing with the court, parties
shall have access, designated for use at a deposition.
17:10:59 1 Vail, Christians & Associates (619)544-8344 405
17:11:03 2 The rest of this stuff has to do with experts.
17:11:29 3 I don't see anything here that we can't
17:11:31 4 comply with in terms of keeping a locked --
17:11:33 5 MR. STONE: Well, let me start with some of
17:11:35 6 the problems that you're already in violation of.
17:11:37 7 Access is allowed only to designated
17:11:40 8 attorneys. Designated attorneys are identified in
17:11:44 9 paragraph LB. Neither you nor your firm has been included
within the order as a designated attorney. That's point

17:11:47 10 one.

17:11:47 11 Point two, the secure facility has to be a
17:11:50 12 room from which the documents are not taken, except for
17:11:53 13 purposes of making copies at another location to allow
17:11:57 14 filing with the court or service of the document.

17:11:58 15 MR. MC GUIRE: Well, somebody on your side is
17:12:01 16 responsible for that. I don't know where -- as far as I
17:12:03 17 know, we got this document from you.

17:12:06 18 MR. STONE: I do not believe you did.

17:12:07 19 MR. MC GUIRE: Well, it looks also like it was
17:12:10 20 an exhibit to a trial, Exhibit 3, Carchman, 10/24/97.

17:12:14 21 MR. STONE: But whether you got it from us or
17:12:17 22 not, you got it from us under the terms of this protective
17:12:20 23 order. And it's designated highly confidential by the
17:12:25 24 stamp on it, in Philip Morris versus ABC. And that
17:12:31 25 designation has the effect of designating it highly
17:12:36 26 confidential in this case.

17:12:37 27 The room in which it is to be maintained has
17:12:40 28 to be one to which access is restricted, no computers,

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17:12:43 1 Vail, Christians & Associates (619)544-8344
17:12:47 2 dictation equipment, voice transcribers, cameras, photo
17:12:53 3 copiers, scanners, facsimile machines, mechanical, or
17:12:57 4 other electronic devices can be permitted in that room.

17:12:59 5 MR. MC GUIRE: I can do that. I've got a room
17:13:01 6 like that where there's nothing in it.

17:13:03 7 MR. STONE: In addition, copies of this
17:13:06 8 document should not have been provided to you or your
firm.

17:13:06 9 MR. MC GUIRE: Well, that's not my problem.

17:13:07 10 MR. STONE: Well, it is, because I didn't
17:13:09 11 provide them to you.

17:13:10 12 MR. MC GUIRE: I don't know that.

17:13:11 13 MR. STONE: I haven't provided you any
17:13:13 14 documents.

17:13:13 15 MR. MC GUIRE: How do you know that? You got
17:13:16 16 5,000 documents you told me you gave us.

17:13:18 17 MR. STONE: I gave them to Preston, Gates.

17:13:19 18 MR. MC GUIRE: They shipped them down to us.

17:13:22 19 MR. STONE: That would be a violation of this
17:13:23 20 order because you're not designated under this order to
17:13:26 21 receive them. They know that. They signed this. You
17:13:29 22 know that.

17:13:30 23 MR. MC GUIRE: I don't know if they signed
17:13:31 24 this or not.

17:13:31 25 MR. STONE: If they didn't sign it, it's an
17:13:33 26 order in the case. They're bound by its provisions.

17:13:36 27 MR. MC GUIRE: You're not going to allow me to
17:13:38 28 ask this gentleman questions about this meeting?

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17:13:45 2 MR. STONE: I'm not going to stop you from
17:13:47 3 asking questions. I'm telling you if you ask questions
17:13:52 4 violating this order or the one in ABC, you're in
17:13:54 5 violation and in contempt.

17:13:55 6 MR. MC GUIRE: I'm going to stop the
17:13:58 7 deposition now, and I'm going to turn my copy of this
17:14:02 8 Exhibit 4035 to the court reporter. I'm going to ask her
17:14:04 9 to put it in a sealed envelope and put it in a room that
17:14:07 10 doesn't have a copy machine in it. I'm going to ask the
17:14:11 11 rest of you gentlemen to give me back your copies. I'm
17:14:13 12 going to ask this gentleman to come back for a
17:14:14 13 continuation of his deposition.

17:14:16 14 In the court orders, this is a document we
can discuss and that this document is no longer highly

17:14:18 15 confidential, has nothing to do with trade secrets, which
17:14:21 16 is the subject matter of high confidentiality only, only
17:14:25 17 trade secrets, as I read this.

17:14:27 18 MR. STONE: It is not. Mr. McGuire --

17:14:28 19 MR. MC GUIRE: Just by raising your voice, it
17:14:31 20 doesn't change anything.

17:14:32 21 MR. STONE: It does, because all you have to
17:14:33 22 read is what it says as highly confidential. It says on
17:14:37 23 page 6, paragraph 10, if you care to look at it.

17:14:39 24 MR. MC GUIRE: I do.

17:14:40 25 MR. STONE: It says, "'Highly Confidential'"
17:14:43 26 information concerning the following: (a) product
17:14:45 27 formulas, specifications, recipes and manufacturing
17:14:45 28 processes; (b) development of new products or technologies
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17:14:49 1 currently marketed or to be marketed in the future; (c),
17:14:52 2 marketing plans and methods; (d) business planning and
17:14:55 3 financial documents; and (e) other information which
17:14:57 4 constitutes 'trade secrets' (as defined in Paragraph 4)."
17:15:02 5 MR. MC GUIRE: Right.
17:15:02 6 MR. STONE: It's certainly far more than what
17:15:04 7 you said it covered.
17:15:05 8 MR. MC GUIRE: Well, I don't think this
17:15:06 9 document fits within that definition anymore. It may have
17:15:10 10 at one time, arguably, but it certainly doesn't anymore.
17:15:13 11 This is not a highly confidential document marked in this
17:15:16 12 case. You have bootstrapped yourself up.
17:15:19 13 I did read this in here where it says that if
17:15:21 14 it's marked somewhere else, then it's considered highly
17:15:24 15 confidential in this case until we get relief from court.
17:15:29 16 I, of course, will honor that order of the court. And so
17:15:32 17 I am stuck between a rock and a hard spot. You've
17:15:35 18 objected. I have to comply.
17:15:37 19 I would like everybody to return their
17:15:39 20 documents. I will give them to the court reporter. Say
17:15:41 21 goodbye to the witness. And see you all next time we can
17:15:46 22 bring this up in court. And if we have to talk with him
17:15:49 23 further about this, maybe we can talk with him from the
17:15:52 24 standpoint that we discussed, perhaps not having him come
17:15:55 25 out here but to appear for a video deposition.
17:15:58 26 I also will make a record right now as long
17:16:00 27 as we're making records that I did not have an opportunity
17:16:03 28 to review the documents, with sufficiency to ask him
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17:16:09 1 questions, that you handed me yesterday afternoon. I'm
17:16:11 2 not prepared to ask him questions about that now. I don't
17:16:13 3 know whether I have to ask him questions or not anyway.
17:16:16 4 But if I do, I would make the motion with the
17:16:19 5 court, which I'll combine with this one, that I ask him
17:16:22 6 questions at that time.
17:16:23 7 I also will be asking for other documents
17:16:25 8 that he mentioned in his testimony, and we may have to
17:16:29 9 talk with him about that.
17:16:30 10 There's nothing -- I know you're not going to
17:16:33 11 agree to anything. We're not making a record here other
17:16:35 12 than me telling you what I intend to do. So having said
17:16:38 13 that --
17:16:39 14 MR. STONE: Let me tell you what I intend to
17:16:41 15 do.
17:16:41 16 One, the reporter is not authorized to
17:16:43 17 maintain these highly confidential documents. I ask that
17:16:46 18 you give them to me. I'll maintain them subject to any
17:16:49 19 rulings by the court.

17:19:43 25 Medical College of Virginia. At the time, that was in the department of pharmacology. I rose through the ranks from assistant professor to associate professor to full professor. The department changed its name to
17:19:46 26 Vail, Christians & Associates (619)544-8344 412
17:19:51 27 pharmacology and toxicology. I had a joint appointment, and I still do, as well as in pharmacology and toxicology in the department of biostatistics.
17:19:54 28 I was also the associate scientific director for the Massey Cancer Center, which was a national cancer institute, comprehensive -- comprehensive cancer center.
17:19:58 1 I have trained in excess of 50 students,
17:20:02 2 M.D.s, and Ph.D.s, in the areas of -- in the medical
17:20:06 3 disciplines of surgical and medical oncology, pulmonology,
17:20:08 4 and immunology.
17:20:11 5 I have trained students from a variety of
17:20:15 6 different -- different countries. I have served on
17:20:21 7 university -- university committees. I have been an
17:20:25 8 expert consultant for the U.S. Environmental Protection
17:20:31 9 Agency and helped write some of the priority health
17:20:38 10 effects documents as a result of the Clean Water Act.
17:20:39 11 I did work for the National Academy of
17:20:42 12 Sciences. I was involved with the Centers for Disease
17:20:45 13 Control and prevention on a project. I was involved with
17:20:49 14 the U.S. Forestry Service in reviewing toxicology and
17:20:53 15 epidemiology of pesticides.
17:20:58 16 And I was awarded research grants and
17:21:02 17 contracts from various institutes within the National
17:21:05 18 Institutes of Health from EPA and from the Department of
17:21:09 19 Defense as well as running the training program for the
17:21:15 20 American Cancer Society, the institutional grant at the
17:21:20 21 university.
17:21:23 22 And I was involved in a number of NEIHS,
17:21:31 23 Vail, Christians & Associates (619)544-8344 413
17:21:36 24 National Institute of Environmental Health Science,
17:21:40 25 training grants. And I received an accommodation from the
17:21:44 26 U.S. EPA for my work that I did with them, and I received
17:21:49 27 a special research career development award from the
17:21:50 28 National Institutes of Health for some of the research
17:21:55 1 that I was doing.
17:21:59 2 And I established the first AIDS P3 research
17:22:03 3 facility at the medical school and obtained the first HIV
17:22:08 4 grant.
17:22:13 5 And I put together and hosted a variety of
17:22:14 6 national and international meetings, including those
17:22:16 7 involving the assistant surgeon general of the United
17:22:21 8 States, Dr. Vernon Houck, as well as doing work for the
17:22:26 9 Department of Defense on chemical safety protection for
17:22:26 10 troops and civilians.
17:22:30 11 And two weeks ago, I was invited to
17:22:34 12 participate in a Mathematical Association of America
17:22:37 13 conference on the role of mathematics in the health
17:22:44 14 sciences, making recommendations as to what kind of
17:22:49 15 mathematics and statistics health scientists need to have,
17:22:51 16 as we move forward into the 21st -- 21st Century.
17:22:58 17 Q Thank you.
17:23:02 18 I think one thing you may not have mentioned
17:23:06 19 was the school from which you got your undergraduate
17:23:11 20 degree.
17:23:15 21 A I received my undergraduate degree at Long
17:23:20 22 Island University in Brooklyn, New York.
17:23:21 23 Q Thank you very much.
17:23:24 24 Vail, Christians & Associates (619)544-8344 414
17:23:29 25
17:23:29 26
17:23:31 27
17:23:33 28

17:23:35 1 About how many publications have you authored
17:23:37 2 or coauthored during your professional career?

A I have something less than 90 peer-reviewed publications and 13 chapters in books and approximately a hundred scientific abstract presentations.

Q Have you, in the course of your years in the various aspects of the field of science that you have been in, become familiar with what you consider to be scientific principles?

A Yes.

Q Can you describe briefly scientific principles as they apply to research.

A Scientific principles exist at -- at least -- at least two levels. And they're based on the premise of academic freedom. That is, the right to pursue scientific -- scientific questions, wherever they might -- wherever they might take you, as long as you don't compromise your fundamental values both as a scientist and -- and as a -- and as a person.

And having been at the university for approximately 15 years and having been involved in peer review of articles and review of research proposals, both from government and nongovernmental sources, it's important to maintain a degree of confidentiality about the things that you're reviewing, because they represent the effort and life's blood of other -- other individuals.

And so when one is asked to maintain the confidentiality of something, especially something that is

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not originated with you, you have a responsibility to do so. But you also have a responsibility to completely report all of the information you have, and if what you've reported has changed in any way, maybe different, you have a responsibility to report that generally in the journal in which you published it in. That's the normal, typical, scientific response for events such as -- such as that.

And you also have a right to criticize and dispute and question other people's work based on the -- on the science and not on any sort of political persuasion or some other aspect that's strictly an objective scientific platform that one should try to exchange ideas and information on. And one should not try to surround one's self with individuals who are all of the like position. Diversity is probably one of the most important things in terms of scientific growth. And that's a key principle, I believe, that is embodied in some of the best scientists I've run into around the world.

Q Did you, before the time you joined Philip Morris, conduct your career as best you could in accordance with the scientific principles you described?

A Yes.

MR. McGUIRE: Objection; move to strike, leading.

BY MR. STONE:

Q After you joined Philip Morris, did you conduct your career in accordance with those principles?

MR. McGUIRE: Same objection.

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THE WITNESS: Yes.

BY MR. STONE:

Q At any time that you've been at Philip Morris, were you aware of other scientists at Philip Morris who conducted their professional lives other than

17:27:16 6 in accordance with the principles you've described?
17:27:18 7 MR. MCGUIRE: Leading and self-serving.
17:27:21 8 THE WITNESS: No.
17:27:21 9 BY MR. STONE:
17:27:21 10 Q Let me ask you about have you served as a
17:27:27 11 peer reviewer for journals?
17:27:28 12 A Yes.
17:27:29 13 Q In the course of a peer reviewer, is it made
17:27:32 14 known to you when you review the paper if there was
17:27:34 15 funding provided by one group or another?
17:27:37 16 MR. MCGUIRE: Vague as to time.
17:27:39 17 THE WITNESS: Usually, there is an
17:27:42 18 attribution on each paper, usually. I would say 90
17:27:47 19 percent of the papers provide an attribution as to the
17:27:51 20 source of funding.
17:27:51 21 BY MR. STONE:
17:27:51 22 Q And over what period of time did you serve as
17:27:54 23 a peer reviewer for journals?
17:27:56 24 A From approximately 1968 until a few years ago.
17:27:59 25 Q And was your testimony about seeing
17:28:02 26 attribution roughly about 90 percent of the time
17:28:06 27 consistent throughout that period?
17:28:07 28 A Yes.
Vail, Christians & Associates (619)544-8344 417
17:28:08 1 Q Did you, as a reviewer, ever recommend that a
17:28:10 2 paper not be accepted for publication because of the
17:28:15 3 sources of any funding disclosed in the attribution?
17:28:18 4 A Absolutely not.
17:28:19 5 Q Are you aware of any journals that today do
17:28:23 6 employ some standard of acceptance for publication based
17:28:26 7 on attribution?
17:28:27 8 A Yes.
17:28:27 9 Q What journals are those?
17:28:30 10 A One of the most prominent ones is -- are the
17:28:35 11 journals from the American Thoracic Society which has
17:28:39 12 publicly stated their position about not accepting any
17:28:42 13 papers that have received partial or any support from any
17:28:47 14 tobacco source.
17:28:49 15 Q Are there any other organizations that you
17:28:51 16 are aware of that have, at any time, said they would
17:28:55 17 refuse to accept papers or input or scientific commentary
17:29:01 18 from groups that are either funded by or associated with
17:29:05 19 Philip Morris?
17:29:06 20 A For example, when Mr. McGuire asked me about
17:29:11 21 the WHO Geneva meeting and whether we had provided input,
17:29:18 22 my answer was, no, because we were told that our input
17:29:21 23 wasn't -- wasn't needed.
17:29:24 24 But having said that, Dr. Solana has been in
17:29:28 25 rather frequent contact with Dr. Yalk, whose name is
17:29:31 26 listed in that document and is one of the principals for
17:29:35 27 WHO in trying to find a way that we can have input into
17:29:39 28 some of the work that they're doing.
Vail, Christians & Associates (619)544-8344 418
17:29:42 1 Q You were -- you mentioned yesterday, I think,
17:29:47 2 something called good laboratory practices or GLP.
17:29:51 3 Do you recall that?
17:29:51 4 A Yes.
17:29:51 5 Q Can you explain briefly to us what that is.
17:29:54 6 MR. MCGUIRE: Cumulative. He already
17:29:57 7 explained it.
17:29:58 8 THE WITNESS: Good laboratory practices
17:30:00 9 represents what -- what is today almost the standard for
17:30:07 10 doing work that -- scientific work that might find itself

17:30:12 11 used by some government and/or regulatory body. Those are
17:30:16 12 the fundamental standards.
17:30:19 13 So, basically, it's an assurance of quality,
17:30:23 14 of maintaining maintenance of the data and the biological
17:30:28 15 materials, and documentation of all changes and
17:30:32 16 modifications that deviate from -- from the protocols that
17:30:36 17 have -- that have been established.
17:30:40 18 And it's -- and it requires regular
17:30:44 19 assessment by the outside -- outside bodies that certify
17:30:48 20 laboratories for this.
17:30:51 21 BY MR. STONE:
17:30:51 22 Q What outside bodies certify laboratories for
17:30:56 23 GLP in the United States?
17:30:58 24 A U.S. Food and Drug Administration.
17:31:00 25 Q Who establishes if there's some group or body
17:31:03 26 that establishes what GLP will be?
17:31:06 27 A There is an international organization. The
17:31:09 28 acronym is OECD, Office of European Community Development,
17:31:17 1 Vail, Christians & Associates (619)544-8344 419
17:31:21 2 and it has established guidelines and procedures that have
17:31:26 3 been adopted by other -- other places, including the U.S.
17:31:32 4 FDA. And there's a very large catalog of these that may
17:31:35 5 or may not be available on the Internet. But they're
17:31:37 6 clearly -- they're clearly available to anybody that's
17:31:37 7 interested.
17:31:42 8 And so research entities, drug companies,
17:31:49 9 chemical companies, laboratories that are involved in
17:31:54 10 important pieces of work, some universities that are
17:31:58 11 doing -- doing work are required to meet those -- meet
17:31:59 12 those standards.
17:32:16 13 Q Yesterday, you mentioned certain limitations
17:32:19 14 or qualifications on the use of animal models, including
17:32:21 15 weight gain depression.
17:32:23 16 Do you recall that testimony?
17:32:23 17 A Yes.
17:32:26 18 Q Is there a group or groups that set some type
17:32:31 19 of a standard for doing animal experimentations?
17:32:34 20 A There are several groups, both governmental
17:32:36 21 and nongovernmental. But even the nongovernmental are
17:32:39 22 really doing this with -- with the government. So whether
17:32:43 23 it's the National Institute of Environmental Health
17:32:46 24 Sciences and underneath them the National Toxicology
17:32:49 25 Program which is actually a consortium of government
17:32:54 26 agencies, including the National Institute of
17:32:59 27 Environmental Health Sciences, the EPA, FPA, the National
17:33:03 28 Health Institute are all part of this NTP. The chairman
17:33:07 1 of the NTP is Dr. Holdman, who is the president.
17:33:09 2 Vail, Christians & Associates (619)544-8344 420
17:33:14 3 And it's the NTP that carries out the vast
17:33:16 4 majority of animal carcinogenicity testing, amongst other
17:33:21 5 things. And they sort of adopted that from the National
17:33:24 6 Cancer Institute which then turned it over to the NTP.
17:33:27 7 And there are rules and criteria that are not only
17:33:34 8 accepted by them. But there are standard rules of
17:33:39 9 practice by toxicologists and pharmacologists in terms of
17:33:42 10 the criteria that are used in evaluating or setting up and
17:33:45 11 designing and then evaluating animal studies.
17:33:49 12 And I think as I said or I tried to say,
17:33:54 13 things like body weight gain depression are one of the
17:33:59 14 classical -- this is nothing new -- overt toxicity end
17:34:02 15 points. And the standard cutoff is body weight gain
depression equal to or greater than 10 percent as
representing a serious level of concern which compromises

17:34:05 16 the validity of any conclusions one might draw from the
17:34:08 17 study. It doesn't invalidate it. It just further puts
17:34:11 18 some limitations on it, significant limitations.
17:34:15 19 Q If a researcher wanted to obtain a copy of
17:34:19 20 these guidelines, where would they go to find them?
17:34:21 21 MR. MC GUIRE: Objection; hypothetical
17:34:25 22 question, no foundation, not here as an expert witness.
17:34:29 23 THE WITNESS: You can basically search the
17:34:31 24 literature. There have been position papers written in
17:34:35 25 Environmental Health Perspectives, which is a journal of
17:34:39 26 the National Institutes of Environmental Health Sciences.
17:34:44 27 ILSI, the International Life Sciences Institute, which is
17:34:48 28 a private organization that does a lot of work for the
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17:34:51 1 government also has some published -- some published
17:34:55 2 standards.
17:34:55 3 And I believe you would find information
17:35:00 4 within parts of the OECD testing guidelines.
17:35:03 5 BY MR. STONE:
17:35:03 6 Q Does NTP publish the guidelines directly?
17:35:05 7 A Not that I'm aware of.
17:35:06 8 Q Does IARC publish any guidelines?
17:35:11 9 A IARC has published over the years in a
17:35:14 10 number of its books, criteria in terms of the importance
17:35:18 11 it puts on certain kinds of -- certain kinds of studies as
17:35:22 12 they might be used as evidence to draw any or make any
17:35:26 13 causal inferences.
17:35:28 14 Q Are you familiar with the concept of a
17:35:30 15 spontaneous rate of tumor genicity or tumor generation?
17:35:36 16 A Yes.
17:35:36 17 Q Is that something that there's published data
17:35:39 18 on that for various strains of experimental animals?
17:35:42 19 A Yes.
17:35:42 20 Q Do you know what the spontaneous rate of
17:35:44 21 tumor genicity is for the Wistar rat that you talked about
17:35:48 22 earlier in your testimony?
17:35:49 23 A Yes. It's --
17:35:50 24 Q What is it?
17:35:50 25 A Zero to 3 percent.
17:35:52 26 Q Do you know what the spontaneous rate of
17:35:56 27 tumor genicity is for the A/J mouse?
17:35:59 28 A Almost 100 percent.
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17:36:00 1 Q Is the spontaneous rate of tumor genicity a
17:36:04 2 factor that any of the organizations you've just mentioned
17:36:07 3 take into account in evaluating experimental results?
17:36:10 4 A Yes.
17:36:11 5 Q How do they do that?
17:36:13 6 A IARC, in comparison of results obtained from
17:36:17 7 such models, basically weighs the spontaneous studies much
17:36:25 8 lower than those in which the spontaneous rate is small.
17:36:29 9 Q I'm sorry.
17:36:30 10 When you say it weighs the spontaneous rate
17:36:33 11 much lower.
17:36:34 12 A It doesn't give it much weight.
17:36:35 13 Q So if the spontaneous rate is higher, the
17:36:39 14 study is given lower weight?
17:36:43 15 A Yes.
17:36:43 16 Q You were asked yesterday, I think, and maybe
17:36:51 17 again today, about certain risk association numbers. We
17:36:57 18 talked about numbers of greater than 5, less than 5, less
17:37:00 19 than 2.
17:37:01 20 Do you recall that?

17:37:01 21 A Yes.
17:37:02 22 Q What does a number -- what do those numbers
17:37:06 23 represent, the number 2 or 5, in the way in which you
17:37:10 24 answered Mr. McGuire's questions over the last couple of
17:37:13 25 days?
17:37:13 26 A They represent a ratio or another way of
17:37:17 27 expressing it as some multiple over a normalized value.
17:37:22 28 So when you compare one group to another, it's not -- it's
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17:37:26 1 not as if the control group doesn't have any of that --
17:37:29 2 any of that disease. That's normalized to 1. So you're
17:37:32 3 looking for the difference between what you see in the
17:37:36 4 unexposed group versus what you see in the exposed group.
17:37:41 5 It's just the ratio of that minus whatever the random
17:37:44 6 background effects might be.
17:37:45 7 Q And yesterday, you described certain numbers
17:37:48 8 as having -- as being strong or weak.
17:37:51 9 Do you recall that?
17:37:52 10 A Yes.
17:37:52 11 Q And strong was greater than 5?
17:37:54 12 A 5 or greater.
17:37:55 13 Q And weak was less than 5?
17:37:57 14 A Yes.
17:37:57 15 Q And then how did you describe a number less
17:38:00 16 than 2?
17:38:01 17 A Marginal.
17:38:02 18 Q What did you mean when you said "marginal"?17:38:04 19 A That it is oftentimes difficult to separate
17:38:08 20 that from no effect.
17:38:10 21 Q In thinking about that question, one of the
17:38:13 22 sets of numbers I think Mr. McGuire showed you today had
17:38:17 23 something referred to as a 95-percent confidence interval
17:38:20 24 associated with it.
17:38:21 25 A Yes.
17:38:21 26 Q What's a 95-percent confidence interval?
17:38:24 27 A As those values are used, it represents the
17:38:31 28 range of values within -- found within that experiment.
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17:38:35 1 So if you have a point estimate, let's say, of 1.16 but a
17:38:42 2 confidence interval that's .93 ranging to 1.44, that
17:38:47 3 basically says that the real value is somewhere between
17:38:52 4 .93 and 1.44.
17:38:55 5 The fact that it overlaps 1 at the 95-percent
17:39:01 6 confidence interval means that, statistically, you can't
17:39:04 7 tell whether it's different than one or not.
17:39:06 8 Q Some of the numbers Mr. McGuire showed you,
17:39:11 9 they -- they overlapped one. They ranged from below 1 to
17:39:14 10 above 1, but they were only maybe a little bit below 1 and
17:39:18 11 maybe a bit more above 1. For example, they might have
17:39:22 12 ranged from .93 to .14, for example.
17:39:26 13 When you have a range like that that has
17:39:29 14 shifted a bit more above 1 or below 1, is there any
17:39:33 15 significance to that?
17:39:35 16 A I think there are two levels of interest
17:39:37 17 here. One, the author has done that statistical analysis
17:39:41 18 themselves to ask themselves that question, whether there
17:39:45 19 is statistical significance. So if they do that kind of
17:39:49 20 procedure, they can't basically ignore -- ignore that it
17:39:55 21 is or isn't statistically significant. So they've carried
17:39:59 22 out this procedure. And if the confidence interval
17:40:03 23 overlaps with 1, it's not statistically significant.
17:40:06 24 That doesn't mean you should throw away --
17:40:09 25 throw away that information. I'm not -- I'm not saying

17:40:12 26 that.
17:40:12 27 Now, when you do those kinds of tests, you're
17:40:15 28 basically asking yourself is this a chance event. And the
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17:40:22 1 statistical significance test is one of the things you use
17:40:25 2 to try to eliminate chance.
17:40:27 3 If it overlaps with 1, you can't eliminate
17:40:32 4 chance, for example.
17:40:33 5 Q So when you say "you can't eliminate chance,"
17:40:36 6 you mean the results observed in the experiments could be
17:40:39 7 accounted for simply by chance or random distribution?
17:40:43 8 A Yes.
17:40:44 9 Q Mr. McGuire asked you yesterday, as I recall,
17:40:48 10 three questions about your views as to whether ETS is a
17:40:53 11 cause or a substantial factor or a factor in the cause of
17:40:59 12 cardiovascular disease, lung cancer, and respiratory
17:41:02 13 illness.
17:41:03 14 Do you recall those three questions?
17:41:04 15 A Yes.
17:41:04 16 Q And then he asked you as to one of them why
17:41:07 17 your view was that it was not a cause.
17:41:09 18 Do you recall giving that explanation?
17:41:10 19 A Yes.
17:41:11 20 Q Was that as to cardiovascular?
17:41:13 21 A Yes.
17:41:13 22 Q Were you asked yesterday by Mr. McGuire to
17:41:17 23 give your explanation as to why you are of the opinion
17:41:21 24 that ETS has not been shown or does not cause lung
17:41:25 25 cancer? Were you asked by that --
17:41:28 26 A Yes.
17:41:28 27 Q -- the question by him?
17:41:29 28 A Yes.
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17:41:29 1 Q Did you give that explanation yesterday?
17:41:31 2 A Yes.
17:41:31 3 Q What's your explanation as to respiratory
17:41:36 4 illness and whether or not ETS causes that?
17:41:39 5 MR. MC GUIRE: Cumulative.
17:41:41 6 MR. STONE: I don't believe this or the lung
17:41:43 7 cancer was asked. The witness's recollection may be
17:41:46 8 correct. I thought we were asked only cardiovascular, but
17:41:49 9 I'll just ask the respiratory illness one for now.
17:41:52 10 THE WITNESS: As I -- as I said earlier in
17:41:55 11 response to one of Mr. McGuire's questions, I felt that
17:41:58 12 exposure to ETS in certain sensitive populations could
17:42:02 13 trigger or exacerbate an asthmatic response.
17:42:05 14 Asthma, as one of its components, has a lung
17:42:12 15 or pulmonary component. So in that respect, I believe
17:42:15 16 that exposure to ETS in some certain population of
17:42:19 17 individuals would satisfy -- would satisfy that.
17:42:22 18 BY MR. STONE:
17:42:22 19 Q And if we set aside the asthma that you've
17:42:25 20 described already and the irritation that you described on
17:42:30 21 the first day of your deposition, are there other
17:42:32 22 respiratory illnesses as to which you've addressed your
17:42:35 23 opinion as to whether or not ETS causes those illnesses?
17:42:38 24 A I have, and my opinion is the data is not
17:42:43 25 convincing with regard to environmental tobacco smoke.
17:42:46 26 Q You were asked by Mr. McGuire if you had any
17:42:50 27 criticisms or questions about work that Dr. Witschi has
17:42:54 28 done.
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17:42:55 1 Do you recall that?

17:42:55 2 A Yes.
17:42:55 3 Q What are the criticisms or questions you have
17:42:58 4 of Dr. Witschi's work that you are -- can recall right now?
17:43:01 5 A Well, the questions that I had which I
17:43:04 6 actually directed at Dr. Witschi over a day's -- a day's
17:43:09 7 meeting, had to do with the body weight gain depression,
17:43:14 8 which was really quite significant. The -- what was going
17:43:20 9 on in the recovery phase, which was the time he saw these
17:43:24 10 effects, and the specificity of that effect in terms of
17:43:29 11 has he looked at other things that would depress body
17:43:33 12 weight gain the way his smoke -- tobacco smoke exposure
17:43:37 13 did. And then see what happens in the -- in the mouse.
17:43:40 14 He basically said it's an interesting idea,
17:43:45 15 he hadn't -- he hadn't done it. I believe either I or
17:43:48 16 somebody else that was there asked him if he had done the
17:43:52 17 particulate smoke exposure alone, in the absence of gas
17:43:58 18 phase, as other people have done with diesel engine
17:44:03 19 exhaust. And unlike Dr. Witschi's study, the diesel
17:44:07 20 engine exhaust, the carcinogenicity associated with diesel
17:44:11 21 engine exhaust is totally particle related and there's no
17:44:14 22 carcinogenic activity in the gas phase.
17:44:16 23 And the gas phase from diesel exhaust is
17:44:20 24 qualitatively and quantitatively the same as that for
17:44:23 25 tobacco smoke. So it would be interesting to try diesel
17:44:27 26 engine exhaust in the A/J mouse model, both particle and
17:44:31 27 gas phase, to figure out what was going -- what was going
17:44:35 28 on.

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17:44:35 1 And, basically, the questions that we
17:44:43 2 discussed resulted in INBIFO carrying out an experiment on
17:44:48 3 the A/J mouse to try to understand what was going on with
17:44:53 4 regard to that model and the way Dr. Witschi performed it.
17:44:57 5 I had no doubt and I think I expressed to him
17:45:00 6 that if somebody were to repeat that work, they would get
17:45:04 7 the same outcome. My problem was I just didn't understand
17:45:09 8 what it meant. And he said to me his real interest was
17:45:16 9 not on tobacco carcinogenicity but on chemoprevention.
17:45:20 10 And so he said -- you know, the big carrot study that the
17:45:25 11 NCI sponsored with smokers where they gave them beta
17:45:28 12 keratin and then the smokers had an increase risk for lung
17:45:32 13 cancer, not what they predicted.
17:45:34 14 He said to me if they would have come to me,
17:45:36 15 I would have run it in my system and that's exactly what I
17:45:40 16 would have shown.
17:45:41 17 Well, it turns out he's done that, and that's
17:45:43 18 not what he's shown.
17:45:44 19 Then he's also looked at some
17:45:47 20 chemopreventative agents that Dr. Hesh at the University
17:45:51 21 of Minnesota has been found to be valuable. And they
17:45:55 22 don't work in his A/J mouse model.
17:45:57 23 So the point is we'd love to have a model to
17:46:01 24 use. His model works in terms of producing lung tumors
17:46:05 25 when exposed to tobacco smoke.
17:46:06 26 There are a lot of controls that need to be
17:46:09 27 done.
17:46:10 28 And then finally I said to him, as I said to
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17:46:12 1 the NTP, if Dr. Witschi's work is correct with this gas
17:46:17 2 phase, it will turn on its head the last 50 years of
17:46:21 3 tobacco carcinogenicity that have been done and published
17:46:24 4 through the U.S. Surgeon General's reports and other
17:46:28 5 reports around the world.
17:46:29 6 If it's correct, it is probably one of the

17:46:32 7 most significant observations made in a long time. It
17:46:37 8 will dramatically change the way we develop products. But
17:46:41 9 there are some unanswered questions that are not trivial
17:46:44 10 that need to be addressed, and we're trying to address
17:46:48 11 it. Not to undermine Dr. Witschi's work, but to try to
17:46:54 12 understand it and see if we can -- we can use it and
17:46:56 13 embrace it.

17:46:57 14 Q Why do you say his work, if it's correct,
17:46:59 15 would turn 50 years of science in this area on its head?

17:47:03 16 A From 1964 to today, the public health
17:47:10 17 community, as evidenced by the Surgeon General, the
17:47:12 18 Committee on Tobacco and Health in the UK, whatever public
17:47:16 19 health body has published on this, has been saying it's
17:47:19 20 the tar, which was a driving force for tar reduction over
17:47:25 21 the last 40 or 50 years.

17:47:26 22 And a lot of that was driven both by the
17:47:30 23 epidemiology and by the work done in mouse skin painting
17:47:35 24 and by the tobacco working group studies that were done at
17:47:38 25 the National Cancer Institute over a ten-year -- ten-year
17:47:42 26 period. And though people realized there were components
17:47:45 27 of the gas phase that were important, what Dr. Witschi has
17:47:50 28 shown, it is the gas phase that's critical. And in one of

Vail, Christians & Associates (619)544-8344 430
17:47:53 1 his papers, he basically said that NNK and benzopyrene are
17:48:00 2 not relevant in his model.

17:48:03 3 Those are two elements that we, as well
17:48:06 4 other members of the public health community and other
17:48:08 5 industry members, have been moving on to eliminate or to
17:48:12 6 reduce. And if those are things we shouldn't put our
17:48:17 7 emphasis on, we need to know that.

17:48:20 8 Q What phase are they in, the ones you've just
17:48:22 9 mentioned?

17:48:23 10 A What? Oh. They're in the particulate phase.

17:48:26 11 Q Okay. Has Dr. Witschi, in either
17:48:29 12 conversations with you or papers you've read, expressed a
17:48:32 13 view as to the effect of the particulate phase of tobacco
17:48:35 14 smoke in explaining the tumors that he observes in his A/J
17:48:41 15 mice?

17:48:41 16 A He experimentally has eliminated it. It was
17:48:43 17 a very straightforward, elegant study, analogous to what
17:48:49 18 people had done in diesel engine exhaust. And his
17:48:53 19 results, I think, were remarkable and maybe even
17:48:56 20 surprising to him. But I believe the results. I just
17:49:01 21 don't understand them. And I'm not exactly sure that
17:49:04 22 Dr. Witschi does at this time too. And that's not meant
17:49:07 23 as a criticism.

17:49:08 24 Q What is -- let me see if I can ask it this
17:49:13 25 way: Do the effects that one observes in animals always
17:49:16 26 translate into humans?

17:49:18 27 A Absolutely not.

17:49:19 28 Q How do you make a judgment as to whether
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17:49:22 1 animal testing results should be extended to apply to
17:49:27 2 humans or not?

17:49:28 3 A I'll give you a quick -- a quick example.
17:49:33 4 d-limonene is a substance that's found in oranges, and
17:49:36 5 it's used in cosmetics. It impacts a floral, orangy kind
17:49:47 6 of aroma.

17:49:48 7 If you give it to animals, in male rats, you
17:49:51 8 get cancer of the kidney. Not in female rats, not in male
17:49:55 9 mice, not in female mice. It is an animal carcinogen.
17:49:59 10 It's dose related, reproducible. It's real. The question
17:50:03 11 is is a human being like the male rat or is it like the

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17:50:44 23
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mouse or the female rat.

And so they worked out the mechanism of action, and the significance is it binds to alpha two microglobulin. It's a protein that precipitates in the kidney of the male rat, produces a chronic irritative foci. That is where the tumor is formed. It turns out there is no alpha two microglobulin in female rats, male mice, or female mice, and, thankfully, there is no such analogue in human beings.

So a real study, a real animal carcinogen, but its relevance to humans is, I think, held in enormous doubt based on these kinds of studies. So there are lots of things that need to be done that have been done, and that's just one example.

Q Are there facts that you are aware of that you've -- let me ask it this way: Are there facts you're aware of that suggest that the A/J mouse model results

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should not be extended to humans with respect to the generation of tumors in the lung?

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MR. MC GUIRE: Leading.

THE WITNESS: At this time, okay, pending an exposition of some of the questions that we've -- we've just talked about, it would be enormously premature. In fact, in 1985 or 1986, Dr. Witschi was a coauthor with one of his coinvestigators, Dr. Maronpot, who was and still is at the National Institutes of Environmental Health Sciences, where they did an exhaustive examination of animal carcinogenicity in different systems. And they concluded that the A/J mouse was unreliable for the large number of false positives. That was done under what are called the standard kinds of procedures.

That's different than what Dr. Witschi has done now with this post exposure where the animals who were overtly toxic, toxic response with the body weight gain, and he takes away the exposure, the body weight gain depression goes away. It comes back to normal. And it's at that point you see this increase in lung tumors. That has to be explained scientifically. There is no scientific explanation at this point that would allow you to say, uh-huh, this is why it happens, this is why it's a good model. And, in fact, this is why it might be relevant to human beings.

Putting aside the concentrations of the ETS surrogate that he used in these studies which were stratapheric.

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BY MR. STONE:

Q Does his beta keratin tests that you described earlier, shed any light one way or the other on whether the A/J mouse is a model for humans with respect to lung tumors?

A Well, his prediction to me was if he were to do that study, it would have reflected what the human situation was, and it didn't.

Q Okay.

VIDEOGRAPHER: Excuse me, Counsel. I need to do a tape change in about five minutes.

MR. STONE: Okay. Go ahead. Why don't we just take a break, and you can do it now.

VIDEOGRAPHER: This concludes Tape 3 of the deposition, and we are off the record at 5:53.

(Discussion off the record.)

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VIDEOGRAPHER: We are back on the record.
This begins Tape 4 of the deposition of Richard Carchman,
and the time is 5:58.

BY MR. STONE:

Q Dr. Carchman, earlier when I asked you about
Dr. Witschi's experiments, you indicated that you didn't
disbelieve, or you did believe his results and thought
they could be replicated.

What were the results that you were referring
to at that point in time?

A If you take the A/J mouse and expose that
animal in his system, which is a whole body exposure, to a
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tobacco aerosol and the levels he was using, 50 to 80
something milligrams per cubic millimeter, which is the
same as 80 micrograms per liter, and you expose those
animals for several months, then remove the exposure and
then just let them sort of live and work in a
nonaerosol-exposed environment -- and I think these
animals were exposed a number of hours a day for a number
of days for several months -- the animal's body weight
gain depression recovers, and you start to see an increase
in what Dr. Witschi calls multiplicity, which I think is a
reasonable parameter to measure.

And the changes are small. I think they're
real. Though, the difference in the distribution of the
lung tumors between the exposed and the nonexposed animals
are the same, which sort of raises a curious question as
to what might be going on. I would have expected there to
be a difference in the distribution of the kinds of tumors
that Dr. Witschi saw. But we'll -- somebody will
eventually figure out what's going on there.

So he saw an increase in lung tumors. It was
somewhat dose related. Curiously enough, when he first
started publishing this -- this work, he started out
around three or four mics per liter or three or four
milligrams per cubic milliliter. And he didn't see -- he
didn't see anything until he changed to this post
exposure.

It would be important if not essential to
then go back and do the whole study from the three level

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up to the 89 or 90 level exactly as he did it with the
post exposure and really get an understanding of the
nature of the dose -- dose-response curve.

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And the reason I say this has to do with the
question whether it's a linear dose response curve or
whether it looks like a hockey stick. These kinds of
questions have enormous implications both in terms of
understanding the biology and then also in terms of risk
assessment, because, as I said yesterday to a question
from Mr. McGuire regarding how EPA extrapolated linearly
from active smoking to ETS, again, if Dr. Witschi's model
is correct in terms of representing what might be going on
in human beings, then there should be a linear dose
response curve.

If it's not linear, it has enormous
implications in terms of the validity of the EPA
underlying assumption with regard to environmental tobacco
smoke.

So there are some very, very important
consequences to understanding what's going on with regard
to ETS, and for us, there's another important consequence

18:02:05 22 in terms of being able to use this model if it makes sense
18:02:09 23 in our product development.

18:02:09 24 Q Do Dr. Witschi's results that you've
18:02:12 25 described lead you to conclude that what Mr. McGuire has
18:02:17 26 called environmentally relevant levels of ETS cause lung
18:02:22 27 cancer in humans?

18:02:25 28 A I don't see how, in the absence of that,
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18:02:29 1 answering the questions that I've raised, how one can
18:02:32 2 make -- how one can make that -- how one can make that
18:02:35 3 statement, as a scientist.

18:02:36 4 Q Mr. McGuire asked you about various
18:02:38 5 epidemiological studies related to ETS.

18:02:41 6 Are you aware of any of those studies that he
18:02:44 7 asked you about in which they show a strong association
18:02:49 8 between ETS and any health endpoint, using the definition
18:02:53 9 you gave in strong a few minutes ago.

18:02:58 10 A In fact, in the report that Mr. McGuire gave
18:03:00 11 me in -- I believe from the Geneva -- Geneva meeting, with
18:03:04 12 regard to SIDS, they had a relative risk of 5.
18:03:11 13 Unfortunately, reading further in the paper -- and this is
18:03:15 14 a point that I happen to agree with, as does Dr. Sanders
18:03:20 15 and Dr. Demsy, from our review of the literature -- they
18:03:23 16 could not tweeze out what the role of ETS was. It was
18:03:28 17 clear in their minds that the association was there with
18:03:30 18 regard to maternal smoking during pregnancy.

18:03:33 19 And they actually, I think, recommended
18:03:36 20 additional work be done to try to understand -- to understand
18:03:40 21 that, as they did for a number of -- a number of other
18:03:43 22 factors.

18:03:44 23 So SIDS, I believe, had the highest relative
18:03:47 24 risk. It was, I believe, 5. But I believe they could --
18:03:52 25 could not clearly separate maternal-fetal from neonate to
18:04:01 26 young child.

18:04:03 27 Q And you're referring to the consultation
18:04:06 28 report, Exhibit 4018?

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18:04:09 2 A Yes, sir.

18:04:13 3 Q Other than that one study that you
18:04:18 4 mentioned, involving SIDS and maternal smoking and/or
18:04:20 5 other exposures, are you aware of any other
18:04:25 6 epidemiological studies or of any epidemiological studies
18:04:29 7 involving ETS that have a risk association of -- that you
would describe as strong?

18:04:30 8 A Not that I'm aware of.

18:04:32 9 Q Okay. Mr. McGuire asked you quite a few
18:04:39 10 questions about scientific controversy. Let me ask you a
18:04:41 11 few questions about scientific consensus, if I might.

18:04:44 12 Is that a term that has meaning to you?

18:04:46 13 A No.

18:04:47 14 Q Can I give you a definition of scientific
18:04:51 15 consensus and see if you can apply it to what you do know?

18:04:55 16 A Okay.

18:04:56 17 Q Is there -- consider scientific consensus, if
18:05:03 18 you will, for purposes of this -- these questions to be a
18:05:06 19 situation in which there is no right-hand or legitimate
18:05:11 20 scientific disagreement. In other words, among
18:05:15 21 scientists, there's no reasoned or principal basis for
18:05:21 22 disagreement that's been expressed.

18:05:23 23 With that definition, does that have meaning
18:05:25 24 to you?

18:05:25 25 A It may. It's nothing that would get me very
18:05:30 26 excited.

18:05:30 27 Q Let me ask it this way, then: How would you, based on your experience, describe the scientific state of Vail, Christians & Associates (619)544-8344 438
18:05:33 28
18:05:37 1 opinion amongst various scientists with respect to health
18:05:40 2 effects of ETS today?
18:05:45 3 A Among scientists?
18:05:47 4 Q Among scientists.
18:05:48 5 A I think it runs the full gamut from believing or being convinced that the data indeed is compelling, to
18:05:51 6 representing it as being unsure or marginal.
18:05:54 7 Q In your experience, have you encountered any instances where -- let me strike that.
18:06:00 8 Are there any scientists today who you have
18:06:06 9 seen in the published peer-reviewed literature that have
18:06:09 10 questioned whether ETS is a cause of lung cancer in
18:06:16 11 humans?
18:06:20 12 A Yes.
18:06:25 13 Q Have you seen that in publications by scientists who are not employed by or funded by Philip Morris or any other entities related to the tobacco industry?
18:06:27 14 A As far as I know, yes.
18:06:27 15 Q Can you give us an example of one of the more recent instances of that that you've seen?
18:06:44 21 A Last month, May 15th issue, the American Journal of Epidemiology, the first -- the first article by Dr. Sam Shapiro from Boston had, as part of his discussion of low risk epidemiology, a number of examples. And one of those examples was ETS and lung cancer. There were several, but that was -- that was one.
18:06:47 22 And he basically concluded, looking at the
18:06:50 23 Vail, Christians & Associates (619)544-8344 439
18:06:54 24 partial -- he didn't even look at all of the things one needs to take into account -- that from his perspective, he could not make a causal inference with those kinds of numbers, given the uncertainties that still remained in terms of evaluating this from an epidemiological perspective.
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18:07:04 26
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18:07:16 1 And he went further to talk about pseudo
18:07:19 2 science and policy and policy driving science rather than
18:07:23 3 science driving policy.
18:07:27 4
18:07:30 5 MR. STONE: Okay. In the interest of time,
18:07:34 6 Dr. Carchman, I'm going to conclude my examination at this
18:07:35 7 time so any other counsel who still have questions can
18:07:39 8 complete theirs. Thank you very much.
18:07:46 9 THE WITNESS: Thank you.
18:07:47 10 MR. MILES: If I have any questions, I'll
18:07:52 11 wait in the event that he has to come back. If he has to
18:07:54 12 come back, I might have questions. But it's after 6
18:07:58 13 o'clock at night on a Friday.
18:07:59 14 MR. MC GUIRE: Anybody else have questions?
18:08:05 15 MR. RICHARDSON: I do not at the present
18:08:08 16 time.
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FURTHER EXAMINATION
BY MR. MC GUIRE:
Q Okay. The IARC policy that you said weighs more heavily toward the use of the Wistar rat as opposed to the A/J mice, where is that published?
A First of all, by analogy, it was low
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spontaneous to high spontaneous where Wistar is an example of a low spontaneous and the A/J is an example of a high

18:08:57 3 spontaneous.

18:08:57 4 Q So if you don't want to see tumors, you use

18:09:01 5 the rat. If you want to see tumors, you use the mouse?

18:09:04 6 MR. STONE: Objection; argumentative.

18:09:05 7 THE WITNESS: Actually, that's another one of

18:09:07 8 your important -- important questions. That's been --

18:09:09 9 that has been significantly debated. The source of this

18:09:12 10 IARC information is within their monograph volumes where

18:09:19 11 they talk about assays, specific biological assays and

18:09:25 12 their use in carcinogenicity testing. And I think it just

18:09:29 13 takes -- I can't tell you which volume it is in. But it's

18:09:31 14 in -- in the IARC monograph series.

18:09:35 15 And it is felt to be a reasonable

18:09:39 16 interpretation of what to do, because the -- your point is

18:09:46 17 really quite important. It's been debated for years. The

18:09:51 18 issue is with a high spontaneous background, are you

18:09:54 19 looking at the kind of cancer you see in people, or are

18:09:59 20 you looking at something else? You may have -- what you

18:10:04 21 could be saying with an increase in a high spontaneous

18:10:08 22 background is something that could be totally nutritional

18:10:11 23 or hormonal or stress related, which, though it may be

18:10:16 24 applicable in certain kinds of cancers in people, the

18:10:18 25 feeling is it's clearly not applicable in the vast

18:10:21 26 majority of cancers that people -- that people get.

18:10:24 27 I'm not saying it's irrelevant and neither is

18:10:27 28 IARC. It's just the relative weight that you consider

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18:10:30 1 these things.

18:10:30 2 BY MR. McGUIRE:

18:10:30 3 Q How long a history is there -- how much

18:10:36 4 literature is there on the spontaneity -- the tumor

18:10:44 5 spontaneity of the Wistar rat?

18:10:47 6 A Quite a bit. It goes back decades.

18:10:50 7 Q Does it go back as far as the 'A' strain

18:10:53 8 mice?

18:10:53 9 A The Strain A?

18:10:54 10 Q Yes.

18:10:55 11 A I don't know.

18:10:56 12 Q Is there as much work as the Strain A mice?

18:10:59 13 A I would say the Strain A mouse had reached

18:11:04 14 its peak in terms of use, by investigators many years

18:11:09 15 ago. Now there are only a few laboratories that still use

18:11:13 16 it. The Wistar rat remains an animal of use. Though, it

18:11:19 17 is not the standard NTP rat, but neither is the Strain A

18:11:26 18 mouse.

18:11:26 19 Q What difference does it make as to whether

18:11:31 20 the 'A' strain mice or mouse has a high spontaneous rate

18:11:37 21 of tumor genicity, as long as you have a control?

18:11:41 22 A But he doesn't have a control. That was one

18:11:44 23 of my points.

18:11:45 24 Q He doesn't have a control group?

18:11:46 25 A He doesn't have a control for his

18:11:49 26 experimental changes.

18:11:50 27 Q In terms of what? He doesn't have a group of

18:11:54 28 mice that were exposed only to air?

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18:11:58 1 A That is a control. The point and in our

18:12:04 2 discussions, I think -- he had recognized this before I

18:12:06 3 had any conversations with him -- that the body weight

18:12:10 4 gain depression associated with -- with tobacco smoke

18:12:14 5 followed by the removal of the exposure and the return of

18:12:17 6 the body weight gain had to be controlled for. And since

18:12:21 7 the control group did not demonstrate a body weight gain

18:12:25 8 depression, the role of body weight gain depression is not
18:12:29 9 controlled for. And that is one of the controls he's
18:12:32 10 missing. And it could very well be the most important
18:12:34 11 control group.

18:12:35 12 Q Did you read Dr. Witschi's depositions?

18:12:42 13 A Depositions?

18:12:43 14 Q Yes. In this case.

18:12:45 15 A I read an affidavit.

18:12:47 16 Q He was deposed, and he explained what
18:12:52 17 controls he had and whether or not he believed that these
18:12:58 18 experiments that he performed were meaningful with respect
18:13:02 19 to the cause of lung tumor multiplicity in the experiments.

18:13:08 20 You have not read that deposition
18:13:10 21 transcript?

18:13:11 22 MR. STONE: I object to counsel's summary of
18:13:13 23 the deposition. It misstates the facts.

18:13:16 24 But you can ask him about whether he's read
18:13:19 25 the transcript.

18:13:19 26 THE WITNESS: I have not read his deposition,
18:13:21 27 no.

18:13:21 28 BY MR. McGUIRE:

18:13:21 1 Vail, Christians & Associates (619)544-8344 443

18:13:27 2 Q Okay. Does Dr. Witschi contend -- or has he
18:13:32 3 advised you that he does not think that the nose-only
application of ETS is valid?

18:13:35 4 A No.

18:13:40 5 Q Have you told -- other than what you've told
18:13:42 6 us on the record here, are there any other discussions
18:13:44 7 that you've had with Dr. Witschi that relate to his
18:13:47 8 experiments with the A/J mice?

18:13:49 9 A I don't think so. Oh. Excuse me. When we
18:13:57 10 were together at INBIFO, I think we basically tried to see
18:14:04 11 if we could engage him, at least intellectually, as we
18:14:09 12 started to move through his test model, if we could, if he
18:14:13 13 would mind if we shared information with him and asked him
18:14:15 14 for input. And my recollection was that he did not object
18:14:18 15 to that.

18:14:19 16 Q And is Dr. Witschi currently involved in
18:14:22 17 studies at -- or experiments at lower levels of exposure,
18:14:29 18 lower levels of concentration?

18:14:32 19 A Of?

18:14:32 20 Q ETS.

18:14:33 21 A Not that I'm aware of.

18:14:35 22 MR. McGUIRE: That's all I have.

18:14:44 23 MR. STONE: Okay. Just before we go off the
18:14:47 24 record, what would you propose we do with 4035,
18:14:50 25 Mr. McGuire? I will -- if you want to --

18:14:54 26 MR. McGUIRE: I propose that we bring this up
18:14:57 27 to the court.

18:14:57 28 MR. STONE: I don't mind that. Just my only
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18:15:00 1 question was what to do about it -- we can go off the
18:15:04 2 video, if you want. Do you care? Do you want to save the
18:15:07 3 video?

18:15:07 4 MR. McGUIRE: We can go off the video and off
18:15:10 5 the record.

18:15:10 6 MR. STONE: I just want to get an agreement.
18:15:12 7 We can go off the video.

18:15:14 8 VIDEOGRAPHER: We are off the video. This
18:15:16 9 concludes the video portion of the deposition. The time
18:15:21 10 is 6:15.

18:15:23 11 (Discussion off the record.)

18:15:30 12 MR. McGUIRE: I suggest we stipulate that the

18:18:58 13 original of the deposition be sent to the attorney
18:19:02 14 defending the witness, who, in this case, is Mr. Stone,
18:19:06 15 that that attorney be charged with the responsibility of
18:19:09 16 advising the witness that the transcript has been prepared
18:19:13 17 and that he has 30 days to correct the transcript and
18:19:15 18 return it to that attorney's office.

18:19:17 19 That attorney then will be charged with the
18:19:20 20 responsibility of advising all counsel of any changes made
18:19:23 21 to the deposition. The transcript may be used as signed.
18:19:26 22 If not signed, the reporter is relieved of all
18:19:28 23 responsibilities under the Code of Civil Procedure. The
18:19:30 24 confidential portions of the deposition will be -- will
18:19:33 25 remain intact with the rest of the volume. However, the
18:19:37 26 front of the volume will indicate that portions of the
18:19:40 27 deposition are confidential and are given subject to a
18:19:44 28 protective order governing the use and dissemination of

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18:19:47 1 certain information and documents and materials produced
18:19:49 2 by certain defendants in the tobacco cases, Roman II. And
18:19:55 3 the confidential exhibits will be separately bound and
18:19:58 4 identified as being confidential.

18:20:01 5 That copies of the transcript may be used in
18:20:03 6 lieu of an original for any purpose, and that the original
18:20:07 7 and any copies can be used as though signed, if not signed
18:20:13 8 within the 30-day time period.

18:20:15 9 MR. STONE: I add only I'll maintain the
18:20:16 10 original and make it available upon request at the time of
18:20:19 11 trial or in connection with any pretrial proceedings.

18:20:23 12 MR. McGuire: I'll add to that, that all the
18:20:25 13 originals -- I don't know what Judge Prager's request is,
18:20:28 14 but, in fact, if he wants to have originals for his use at
18:20:32 15 the time of trial, all counsel will be bound, whoever
18:20:35 16 receives them, to make them available at that time.

18:20:37 17 And then the last thing is -- oh. I don't
18:20:40 18 know if I said this, but it's going to be signed under the
18:20:43 19 penalty of perjury.

18:20:43 20 MR. STONE: Great. That's acceptable.
18:20:45 21 With respect to Exhibit 4035, what I propose
18:20:51 22 is that Mr. McGuire's copy which contains notations or
18:20:56 23 markings or his work product will be sealed in a separate
18:21:00 24 envelope, sealed, to be signed by him. I'll collect the
18:21:03 25 remainder of the copies of Exhibit 4035. I'll maintain
18:21:07 26 both the envelope, the sealed envelope with Mr. McGuire's
18:21:10 27 copies and the other copies in another sealed envelope in
18:21:13 28 a room which complies with the provisions of the

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18:21:15 1 protective order and will be governed by any rulings by
18:21:19 2 the court with respect to those documents.

18:21:21 3 And we'll commit to Mr. McGuire that neither
18:21:23 4 myself or anybody in my office will at any time undertake
18:21:26 5 or make any effort to open the envelope that contains
18:21:29 6 Mr. McGuire's copy.

18:21:31 7 MR. McGuire: Okay. I would ask -- that's
18:21:33 8 agreeable with me.

18:21:33 9 There's one other request I'd like to make.
18:21:37 10 And that is this document, Exhibit 4035, is apparently
18:21:42 11 identified as being highly confidential information
18:21:44 12 produced by Philip Morris subject to court order in Philip
18:21:48 13 Morris versus ABC. I have no idea what case that is. I
18:21:51 14 have no idea whether the highly confidential nature of
18:21:54 15 this document applies in this case, whether the same
18:21:58 16 protective order in that case applies to this case.

18:22:01 17 And, therefore, and out of an abundance of

18:22:04 18 caution and not wanting to tread on the court's authority
18:22:10 19 to manage this case, I am, based on representations made
18:22:14 20 to me by Mr. Stone that this is a highly confidential
18:22:17 21 document, conceding to his requests. However, I do
18:22:21 22 request that he advise me within a week, if that's enough
18:22:24 23 time, or whatever he thinks is a reasonable period of
18:22:26 24 time, as to whether or not he or anyone else in this
18:22:30 25 proceeding are still claiming this to be highly
18:22:32 26 confidential or if only portions of the document are
18:22:35 27 highly confidential, to provide me with a redacted version
18:22:40 28 of it that eliminates any highly confidential information

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18:22:42 1 and keep available my copy in case I want to challenge,
18:22:46 2 pursuant to the procedures outlined in the protective
18:22:50 3 order, his designation of the information as being highly
18:22:54 4 confidential information, as that term is defined in the
18:22:58 5 protective order.

18:22:59 6 MR. STONE: Okay. I just -- in response, I
18:23:03 7 did not independently review this document prior to
18:23:06 8 receiving it today. And what I observed from what I saw
18:23:09 9 today is that it has previously been designated highly
18:23:12 10 confidential. And I think we're required under the
18:23:14 11 protective order to comply with that designation.

18:23:16 12 I will undertake a review of the document to
18:23:18 13 determine if there are any portions or the entirety of the
18:23:23 14 document for which we no longer claim that protection.
18:23:26 15 I'll notify you of any changes in our position. I'd like
18:23:29 16 to have two weeks in which to do it, if I can. But I will
18:23:32 17 undertake to do it within that period of time.

18:23:34 18 And I will maintain your copy, as I said,
18:23:37 19 until either the court instructs me to give it back to you
18:23:39 20 or the case ends and we figure out what else to do with it
18:23:42 21 at that point in time. I will not, in any event, look at
18:23:45 22 your work product.

18:23:45 23 MR. MC GUIRE: That's fine.

18:23:47 24 MR. STONE: Okay. Off the record. Thank
18:23:49 25 you.

18:23:49 26 (Whereupon, at 6:23 p.m. the proceedings were
18:23:49 27 adjourned.)

* * * * *

18:23:49 1 Vail, Christians & Associates (619)544-8344 448
18:23:49 2 I hereby declare under penalty of perjury that
18:23:49 3 the foregoing is my deposition under oath; that these are
18:23:49 4 the questions asked of me and my answers thereto; that I
18:23:49 5 have read my deposition and have made the necessary
18:23:49 6 corrections, additions or changes to my answers that I
18:23:49 7 deem necessary.

18:23:49 8 In witness thereof, I hereby subscribe my name,
18:23:49 9 this _____ day of _____ 2000.

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Richard Carchman, Ph.D.

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18:23:49 1 STATE OF CALIFORNIA)
18:23:49 2 : SS.
18:23:49 3 COUNTY OF SAN DIEGO)

18:23:49 4
18:23:49 5 I, Margaret A. Smith, CSR No. 9733, hereby certify
18:23:49 6 that I reported in shorthand the above proceedings on
18:23:49 7 Friday, June 2, 2000, at 550 West C Street, Suite 1440, in
18:23:49 8 the City of San Diego, County of San Diego, State of
18:23:49 9 California; and I do further certify that the above and
18:23:49 10 foregoing pages, numbered from 203 to 449, inclusive,
18:23:49 11 contain a true and correct transcript of all said
18:23:49 12 proceedings.

18:23:49 13 It was stipulated that the original deposition be
18:23:49 14 delivered to Mr. Stone, for the purpose of having the
18:23:49 15 witness read, correct and sign his deposition under
18:23:49 16 penalty of perjury; said original thereafter to be
18:23:49 17 maintained by Mr. Stone until the time of trial.

18:23:49 18 DATED: JUNE 14, 2000.

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MARGARET A. SMITH
CSR NO. 9733

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